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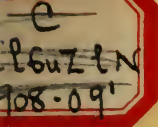
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LAW EXAMINATIONS

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Papers used at the

FIRST SEMESTER EXAMINATIONS

1908-1909

—IN THE—

COLLEGE OF LAW

—OF THE—

UNIVERSITY OF ILLINOIS

.....

January-February, 1909

UNIVERSITY OF ILLINOIS

COLLEGE OF LAW

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DEGREE OF LL. B.

The course of study extends through three years; it covers a wide range of subjects, in part elective and in part required, including all subjects required by the rules of the Supreme Court for admission to the bar, and at the successful completion of the course the degree of Bachelor of Laws (LL. B.) is conferred.

SUMMER SESSION.

A Summer Session of ten weeks, from June 21 to August 27, and divided into two halves of five weeks each, will be given during the summer of 1909. Complete courses will be offered in a large number of subjects. This session is primarily for the benefit of those who find themselves unable to attend the regular session.

INFORMATION.

For the printed announcement of the courses, entrance requirements, dates of examinations, requirements for graduation, etc., and for other information, address Barry Gilbert, Secretary of the College of Law, University of Illinois, Urbana, Illinois.

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UNIVERSITY OF ILLINOIS

COLLEGE OF LAW

Examination in Agency.

January, 1909.

PROFESSOR GREEN.

(Give reasons for every answer.)

1. A had hired a new cook. He sent his coachman to the railroad station to meet her on her arrival and drive her to A's house. By the coachman's negligent driving she was injured while in the carriage on the way to the house.

Is A liable? Is the coachman?

2. A farmhand saw a neighbor's cow doing damage in his employer's field. He chased the cow out of the field and several hundred feet down the road, throwing stones at her all the way. The cow was hit and injured by the stones.

Is the employer liable?

3. A corporation with a capital stock of \$1,000,000, all outstanding, was authorized by the Legislature to issue \$1,000,000 of stock in addition. The corporation duly authorized its President and

its Secretary to receive subscriptions for that amount of stock at par, and, on payment, to deliver stock certificates to the subscribers. The President and Secretary received subscriptions, took payment and issued certificates to the amount of \$5,000,000, and absconded with the money received, as they had intended to do from the beginning. Under the law, the stock issued in excess of the authorized amount was void, and the holders of the certificates acquired no interest in the corporation.

What, if any, remedy do they have?

4. X and Y were employes of M and worked in his factory side by side at the same machine. The machine became dangerously out of order. X complained to the superintendent, who directed Y, a skilled mechanic, to repair it. Y, though competent, made the repairs negligently and failed to remedy the defect. In consequence thereof, X was injured while working at the machine in ignorance of the danger.

Is M liable to X? Is the Superintendent? Is Y?

5. What is meant by "independent contractor," "del credere agent," "factor," "vice-principal," "ratification?"

6. Write a brief summary of the law as to the liability of a supposed agent who, in good faith, makes a contract in the name of a supposed principal, which is in fact unauthorized.

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7. A was manager of X's store, with authority to hire employees. He wrote to R, saying: "I hereby offer you a position as bookkeeper in X's store (of which I am manager) at \$20 a week. A." R accepted. A refused to carry out the contract. X was in Europe and knew nothing of the transaction.

May R maintain an action on the contract against A? Against X?

8. A lent B his horse for a month for use on B's farm, and told him that if he had a chance to sell it for one hundred dollars he might do so, but not to disclose what the price limit was. B sold the horse to a neighbor for ninety dollars and a colt worth forty dollars, telling him that the horse belonged to him, B, which the neighbor believed. B delivered the horse under the contract to the neighbor, against whom A, learning of the affair at the end of the month, brought replevin for the horse.

Who should have judgment?

9. C, a druggist in Chicago, opened a branch store in Urbana and hired D to run it, giving him authority to make sales and buy supplies for cash or on credit and generally to manage the business in C's name. D bought supplies on three months' credit and gave a negotiable promissory note in payment signed, "For C, D."

Is C liable on the note? Is D liable on the note?

10. A hired B as cashier on condition of his giving a satisfactory bond for his fidelity. X and Y consented to go on the bond for B. X accordingly signed and sealed a bond in proper form, except that the space for the penal sum was left blank, and sent it to B with a letter saying that B might fill the blank to meet A's wishes. Y wrote to B, asking B to sign Y's name and affix a seal for him. B, having found out that A would take a bond for \$1,000, filled in the blank with that sum, signed Y's name, affixed a seal opposite and gave the bond to A, who accepted it, knowing nothing of the way it had been written, signed or sealed.

Is the bond so executed as to bind X? To bind Y?

Examination in Bankruptcy.

ASSOCIATE PROFESSOR NORTHRUP.

1. In 1890 A and B both being citizens of the same State, A obtained a judgment for \$800 against B in an action for libel. Later both parties moved to another State, and B applied in the State where they then resided for his discharge in State insolvency proceedings.

Can he be discharged from the judgment?

2. In 1900 a State passed an involuntary insolvent act which provided for equal distribution of the debtors' assets and a discharge from his debts. A, a citizen of that State, owed debts aggregating \$300. After the passage of the insolvent act A's creditor's brought involuntary proceedings against him under the State act.

Can the proceedings be maintained?

3. State when the following may be adjudged either voluntary or involuntary bankrupts:

(a) Non-residents of the district in which the proceedings are brought.

(b) Infants.

(c) Married women.

(d) Insane persons.

(e) Farmers.

4. A sold, by verbal contract, his horse and wagon to B, who paid the price in cash. A agreed to deliver the property the next day. On the same day, after the sale, the horse and wagon were levied upon while in A's barn, under execution against A, the execution being issued after the sale but on a judgment rendered before. B brought trover against the sheriff. No fraudulent intent was shown.

Can B recover in Illinois?

5. A was indebted in an amount in excess of the entire value of all his property, part of which indebtedness was to B, his son, who lived with him. A conveyed all his property to B in consideration of the satisfaction of B's debt, the assumption by B of certain other preferred debts of A's and the furnishing to A and his wife of a support on the land during their lives. A and his wife, by the terms of the sale, continued to occupy the principal dwelling house. There was no visible change of possession and both A and B used and controlled the property as convenience required.

Can A's creditors have the conveyance set aside?

6. A, who was in business, was able to meet his debts as they fell due, but he owed \$16,000 and the total value of all his property was only \$14,000. In this condition of his affairs he conveyed his dwelling, of the value of \$5,000, to his wife, without consideration. At that time he intended to wind up his business and expected to be able to pay all his indebtedness out of his property other than the house, as he had some property that he thought would rise in value. He later decided to continue in business, and did so, becoming indebted to B for \$800.

Can B have the conveyance of the house set aside in Illinois and in general?

7. X had money on deposit in a bank. Being insolvent, he drew a check on the bank payable to Y, which check the bank paid. The check was given in payment of a past indebtedness owing by X to Y. Later bankruptcy proceedings were instituted against X and a trustee appointed.

Can the trustee in any case recover from the bank the amount of the check, and, if so, what must the trustee show to so recover?

8. On July 1 a petition in involuntary bankruptcy was filed against A. On July 10 A sold his house for \$5,000 cash, and with the money purchased, on July 12, stock, which he sold on July 20 for \$7,000. On July 30 he was adjudicated a bank-

rupt. On August 1 he reinvested the \$7,000 in stock which he sold on August 5 for \$8,000. On August 7 a trustee was appointed.

What interest has the trustee in said house and in said \$8,000?

Examination in Bills and Notes.

PROFESSOR GILBERT.

1. "MR. THOMAS HOWE, June 5, '06.

In account with G. C. FLEMING:

To bill rendered	\$520.67
" 680 lbs lime	2.21
Cr. by 309 sacks returned, at 10c	\$30.90
Total due	\$491.98

PAUL F. KING & Co.:

Please pay Fleming the above and oblige.

THOMAS HOWE.

This amount of \$491.98 is to be paid to Fleming out of the first money received by us for the \$8,000 still due Howe from the Milwaukee Realty Co.

PAUL F. KING & Co.

June 7, 1906."

What is the nature of the foregoing document in Illinois, both before and after the adoption of the Negotiable Instruments Act? What would be the rights of Fleming against either Howe or King

& Co. on June 7th? What rights would an indorsee from Fleming receive?

2.

"Dec. 1, 1907.

On on before my death I promise to pay to the order of James Watson \$500.

JOHN W. MULLAN.

(Indorsed)

Pay to John Young.

JAMES WATSON."

On January 20, 1908, Mullan died. On June 1, 1908, Young paid \$300 to Watson for the note. On October 1, 1908, Watson presented the instrument to the administrator of Mullan, who refused payment.

(a) What are the rights of Young as against either Watson or Mullan's estate on the foregoing facts? (b) Suppose that Young had bought the note on December 10, 1907, and that it were shown that the instrument had been executed to pay a gambling debt, but Young did not know this? (c) Suppose that Young purchased on January 24, 1908, and that the administrator set up that Mullan owed Watson nothing?

3. E. Nordman had an account with the City National Bank. A check bearing his name was presented there by the First National Bank of Memphis and paid. Nordman denied drawing the check, but admitted having signed his name in a note book of a man he barely knew, as a memo-

random as to where he might be reached by a letter. It turned out that the note book was in fact a bundle of blank checks and that Nordman, signing in the deepening twilight, did not observe the fact. The signature was not all on the regular line, but began on it and ran upward at an angle of 45 degrees. The sharper had disappeared after negotiating the instrument in a gambling house, which in turn sold it to the Memphis bank.

Can the bank charge up the payment against Nordman's account?

4. Could the bank, if it chose to do so, recover the money paid by it to the Memphis bank? Suppose it had certified the check at the instance of the Memphis gambling house: could it refuse to pay on a later presentation? Where would be the burden of proof on the question whether or not the gambling house was a bona fide purchaser, if such a question should be in any wise material? What should the Court instruct the jury on the subject of gross carelessness, either in the case of Nordman or of the gambling house?

5.

"Champaign,

Jan. 10, 1909.

To the Champaign Township Bank.

Pay to the order of bearer, \$500.

JAMES WILSON.

(Indorsed)

JOHN TURNER (without recourse)

Pay to the First National Bank of Illinois, as

collateral to my loan of \$1,000.

J. B. McMANUS."

This instrument was obtained by Turner from Wilson by duress and was delivered by him to Boggs, who in turn delivered it to McManus.

(a) Can the bank recover thereunder? What if Boggs knew of the duress? (b) Suppose Wilson had been a minor; what would be the rights of the bank, of McManus, and of Boggs against any and ALL of the other parties mentioned?

6. The following instrument was made for the accomodation of Jones:

"June 1, 1907.

We promise to pay to the order of J. M. Jones, \$1,000, with interest at 6 per cent after maturity.

SMITH, McMULLEN & Co."

Jones was a secret partner in the firm. He negotiated the instrument on December 1, 1907, to Swift & Co., who on March 1 demanded payment. The makers set up that Swift & Co took with knowledge of the fact of the accomodation, and that they were, besides, not bona fide holders.

Is either defense available on the facts set forth?

7.

"CHICAGO, Jan. 10, 1907.

Pay HENRY WISE, or order, on demand,
\$6.000

WALTER THOMAS, Cashier
of 3d Bank of Republic.

TO THE NORTH AMERICAN BANK, PITTSBURG:

(Across the face was endorsed:) October 10, 1907, Accepted, J. B. HORN, Cashier.

(On the back appeared the following:) Pay to William Green, Trustee for J. T. Spencer.

HENRY WISE,
GEORGE BURTON,
WILLIAM GREEN, Trustee."

This instrument was presented for payment on November 10, 1907, and was dishonored by the North American Bank. Notice thereof was mailed to Thomas and Green, who two days later notified Burton, who on the day after receiving his notice, informed Wise.

(a) What was the effect of Green's endorsement?

(b) What is the nature of Burton's undertaking?

(c) Can Thomas and Horn be held personally?

8. In the case foregoing, can the Bank of the Republic be held, and is Wise liable to the holder?

9. X had funds in the Madison bank and on August 10 drew a check for \$220.00 thereon payable to M. O. Brown. On October 10, X, having moved to Champaign, desiring to transfer his account, and figuring that he had \$2.67 on deposit, wrote the bank to send him his "balance now with you on deposit." In three days he received a draft for \$402.67. Being surprised, he wrote back on October 14 to the bank for a statement. On Octo-

ber 12, Brown had deposited his check in the Champaign bank, which forwarded the same for presentment on October 13, whereupon the Madison bank, having closed the account by remitting thus the actual balance due, dishonored the check, which was duly protested. X learned on October 16 that the balance of \$402.67 was correct, inasmuch as two checks, Brown's for \$220.00 and another for \$180.00 had not previously been presented.

Who should pay the protest fees?

10. "URBANA, May 5, 1908.

Sixty days after date I promise to pay to William Schofield or order, \$1,000.

HOWARD HAYS.

(Indorsed.)

Pay to Grant Logan when he completes the masonry work on my store building.

WILLIAM SCHOFIELD.

Pay P. C. Brewster.

GRANT LOGAN."

This instrument is presented to Hays on July 5, at 10:00 a. m. Should he pay it? Can he safely pay it? What would be the rights of all parties if Hays were to pay it and it was then found that Logan had done no work on the building? If Hays refused to pay at 10:00 a. m., but at 4:00 p. m. changed his mind, could he then claim the right to discharge the note? What effect would notice to indorsers have, if mailed at 1:00 p. m.?

Examination in Corporations.

MR. COSGROVE.

- Define:—(a) Corporations.
(b) Share of stock.
(c) Dividend.
(d) Give the requisite of De Facto Incorporation.
(e) Give the distinction between capital and capital stock.

II.

Bill praying that the defendant, widow and executrix of T. B., deceased, may account for certain shares in the Chicago and Alton railway company and that it be declared that the plaintiff, his heir at law, become entitled to these shares and that the secretary of the railway company be directed to insert the plaintiff's name in the transfer books as owner thereof.

No dispute as to facts, and the only question

is whether these shares were a part of the real or personal estate of the testator.

How should the question be decided?

Give reasons.

III.

Two citizens of Champaign organize a corporation for the purpose of manufacturing artificial ice, and call the company the Champaign Artificial Ice Company. Afterwards, the business not proving profitable, all the stock is purchased by the plaintiff, who closes the plant and ceases to do business. Three months afterward, no other action of any kind having been taken in the matter, the defendant, under a writ of execution against one of the original shareholders, seizes two wagons formerly used by the corporation to deliver ice, which are in a shed near the ice plant. The plaintiff brings an action of replevin for the wagons, and to support this action proves the facts as above set forth and introduces in evidence the transfer book of the corporation showing the transfer of all the stock to himself. The defendant asks for a peremptory instruction in his favor.

What should be the rule of the Court and why?

IV.

A company is incorporated for the purpose of building an interurban line from Cleveland to Cincinnati. An honest attempt was made to organize

under the statute and a colorable compliance therewith was had, the only omission being the failure to record the final certificate. This omission under the statute would be fatal to a *de jure* incorporation, yet a *defacto* incorporation could be clearly shown. In entering the city of Cleveland the company found it necessary to build their road through a private park. The owner of the park refuses to grant this permission and condemnation proceedings are brought. At the hearing the defendant offers evidence to prove the failure of the plaintiff corporation to file the final certificate. This evidence is objected to.

What should be the ruling of the Court? Discuss the proposition of law involved fully.

V.

The defendant subscribes for stock in a corporation about to be formed and his contract is acted upon and accepted by the corporation. After its formation the shares are entered in his name and a certificate of the stock tendered him; he refuses to accept the certificate or pay the call issued upon his shares. Shortly afterward he agrees to subscribe for stock in a contemplated corporation and puts his agreement in writing. Upon formation of the second corporation he again refuses to live up to his contract. The directors of both corporations are the same, and they decide to sue him on each contract.

What are his respective rights and liabilities

under these contracts, and what is the measure of damages recoverable by the corporation in each case?

VI.

Action on a contract. The evidence shows that one Brown and others were engaged as promoters in procuring the organization of the defendant company; that on January 1, 1907, they, as such promoters, made a contract with the plaintiff, in behalf of the contemplated company, for his services as advertising-man for the period of eleven months from and after February 1, 1907, the date at which it was expected the company would be organized. In fact, the company was organized June 1, 1907, and the plaintiff, in pursuance of his arrangement with the promoters, entered upon the discharge of his duties. The board of directors never took any formal action on the contract made in its behalf with the plaintiff, though it was called to their attention and was known by all the other officers and stockholders. The plaintiff was retained in the employ of the defendant corporation for three months and then discharged.

In this action the defenses are (1), that there is no contract between the plaintiff and defendant corporation; (2), Statute of Frauds, the contract not being performable in one year, being dated January 1, 1907, and running eleven months from time the corporation came into being and the plaintiff commenced his duties.

What should be the result and why?

VII.

Case to recover for damages to plaintiff's vessel while passing under defendant's bridge, alleged to have resulted from the improper construction and maintenance of such bridge. At the conclusion of the evidence the Court directed a verdict for the defendant corporation. Plaintiff brings error. The defendant corporation was given the power to build a bridge across the Illinois river at Peoria, and the charter provided "That the said company shall not erect any works or make any improvements connected with the Illinois river, unless the same shall be so constructed as to leave the channel of said river as safe and as convenient for the descent of boats as it now is." In building the bridge ten piers, a reasonable and necessary number, were placed in the river. The plaintiffs contend that the river is not as safe and as convenient for navigation as before the erection of the bridge; this is admitted to be true. The negligence and improper construction of the defendant assigned by the plaintiff is the placing of the piers in the river.

What should be the decision of the Court of Review on the writ of error?

VIII.

Bill praying for an injunction to restrain the defendant corporation from operating a ferry between two cities on opposite sides of the Illinois river.

The plaintiff is a corporation organized for the purpose of building and maintaining a bridge across the river and connecting these same two cities. The plaintiff corporation was given the power to collect tolls and the exclusive right and privilege of maintaining a bridge across the Illinois river at this point for a period of twenty-five years.

The defendant corporation, afterward organized, proceeds under its charter to run a ferry immediately beneath the bridge.

Should the injunction be granted? Give reasons for your answer.

IX.

The American Bible Society, a corporation of the State of New York, being incapable under the laws of that State of acquiring the title to real property by devise, is named as devisee in a will disposing of real estate situate in Illinois.

The charter of the corporation is silent as to its power of acquiring real property, but a statute of the State of New York prohibits corporations of a certain class, to which class this American Bible Society clearly belongs, from taking title to real property by devise. There is no such statute in Illinois. The question is as to the power of the corporation to acquire title to this land named in the will.

Discuss fully.

X.

The Standard Fire Insurance Company, a corporation of Illinois, declares a dividend of 5 per cent on all its stock. This dividend amounts to \$20,000.00, which sum is afterward placed in a bank for the purpose of checking upon in order to pay the claims for dividends. Nearly all the money was thus drawn out when a fire in one of the large cities destroyed a great amount of property upon which said Standard Fire Insurance Company was carrying policies.

A receiver having been appointed, he draws the remainder of the dividend fund from the bank, and upon application by the holders of the shares for their portion of said dividend refuses to pay them, replying that the corporation is insolvent.

This action is brought to recover the amount of the dividends.

What are the respective rights of the parties?

Examination in Contracts.

PROFESSOR GILBERT.

1. Smith, the owner of the Melrose Block and the proprietor of a store in one room thereof, on October 1, 1908, by a verbal contract, for the sum of \$1,500, sold to A. Israels his stock in the store, rented him the store room until January 1, 1909, and gave him, "to be open until January 5," the option of occupying the store "as long as you may want it after January 1, 1909, at the rate of \$50 per month."

What are the rights of Israels on January 5, supposing that he verbally chooses a term of eight months? What if Israels on January 5, should refuse to state how long he took it for, but asserted merely, "I accept the offer contained in the option?" What if he kept silent on January 5, but on January 10 was still in possession and asserting the right to continue the occupancy?

2. What if Israels on January 5 verbally states, "I accept the offer for the term of five

years?" Or what if he mails to Smith a postal containing only the words foregoing? What if he sends a sealed letter to Smith as follows: "Mr. Smith, I hereby accept your offer to allow me to occupy your corner store at \$50 per month for five years. A. Israels"? In this question state the rights of Israels and of Smith in all the instances put.

3. Smith wilfully assaulted Jones, who in self defense struck Smith in the eye, destroying its sight. Smith threatened suit and Jones agreed to pay him \$500 "in compromise."

Can Jones be held on his promissory note given pursuant to this agreement?

4. Walker on June 1 wrote Baker, "Will sell you my house for \$4,000." Baker replied by telegram "I accept." This was on June 2. The message was missent and reached Walker at 10:00 a. m., June 5. On June 4 Walker had deposited in the postoffice a letter withdrawing the offer, and it was delivered to Baker at 12:00 m. June 5.

Can Baker hold Walker? Can Walker hold Baker?

5. X published the following handbill: "AUCTION. All my household goods will be offered for sale to the highest bidder Tuesday next at 9:00 a. m." Y saw this and journeyed fifty miles at a cost of \$5, but no auction was held.

Can he recover anything from X?

6. Suppose that the auction had been held and that Y had bid (no one else offering a bid,) \$2 on a bedstead that cost \$20.

Could he hold X after the latter had refused to knock down the article to him after trying to secure further bids upon it? What if immediately upon the making of the bid of \$2 X had said, "That is too small. I won't even listen to that," and had refused to let Y take the bedstead.

7. February 1, S wrote T, "I will sell to you for \$100 cash my four old buggies." On February 5, T wrote back, "Accepted, but can't pay you over \$75 cash, balance next month." February 10, S shipped the buggies. T changed his mind in the meantime and refused to accept, notifying S before he knew that the buggies were on the way, but after they were in fact shipped.

Is T liable? Could T have held S on February 9?

8. Z said to Y, "If, before I go west, you will promise to lay a board walk from your kitchen up to your lot line, I will lay a walk of the same kind from there to my kitchen door, will put up a division fence between us and put in a gate." Y replied, "I will think it over." Z was confined in the hospital for several weeks following this, and in the meantime Y laid the walk. Z knew nothing of Y's act and went west without seeing either Y or the walk. On his return Y seeks to hold him to his promise, but Z refuses.

Is he justified in law? Is he under any liability? Would your answer be in any wise affected if the proposition had been to lay the walk from Y's kitchen door to Z's, and Y had so laid it?

9. The law of Illinois requires that a son shall support his indigent father. On June 5, 1905, the father, living near Champaign, owned a farm and was about to move to Wisconsin. He sent for his son and put him into possession rent free. A month later, nothing being said about the farm, the son proposed to the father that the former should take out a life insurance policy on the life of his mother payable to himself, and that on the death of his mother in his own lifetime, if it should so occur, he would give the proceeds to the father. The father assented, moved to Wisconsin, and the son occupied the farm for two years, when it was sold on a judgment obtained against the father in tort in Wisconsin. At the same time the mother died and the father, now indigent, demands that the son shall pay to him all the insurance money.

Is he correct? Answer on the exact facts set forth.

10. X purchased a furnace from Y on three months' time, Y making no representations other than that the furnace was in perfect condition. At the expiration of two months, X complained that the furnace consumed a great amount of coal. Y thereupon said, "If you have to pay more for

your fuel this winter than you did last, I will put the furnace in to you at cost." An unusually severe winter followed and X's fuel bill was double what it had been the preceding winter.

Can he hold Y on the promise?

Examination in Constitutional Law.

January, 1909.

PROFESSOR GREEN.

1. To what extent does the Constitution of the United States secure a right to a trial by jury in civil and criminal cases, (a) in Federal courts, (b) in State courts?

2. By the common law as interpreted in a certain State, (a) no man could be convicted of murder upon the uncorroborated evidence of an accomplice, (b) nor was the testimony of a wife admissible against her husband. By statute both rules were changed. Thereafter a man was convicted of murder committed before the statute was passed on the uncorroborated evidence of his wife that he had committed the crime at her instigation and with her help.

Should his conviction stand? Why?

3. A was under indictment by a Federal grand jury for swearing falsely before the Col-

lector of Customs as to the value of dutiable goods which he had imported. A Federal judge issued a search warrant directing the marshal to enter A's business office and seize certain documents of A's particularly described in the warrant, which, if produced voluntarily, would be competent evidence of the value of the goods. The marshal entered the office in business hours and took the papers from the top of a desk where they lay in sight, A forbidding him to touch them, but making no resistance.

(1) Has A a right of action against the marshal?

(2) Are the documents admissible in evidence against A on his trial, if properly proved? Why?

4. Tell briefly what is meant by "due process of law" in the 14th amendment to the Constitution of the United States.

5. If a member of a State Legislature felt bound to vote against a proposed statute as unconstitutional because he believed it would deprive persons of liberty or property without due process of law, does it follow that if the statute were enacted and a case which turned upon its validity came before him as a judge of the highest court of the State, to which he had since been elected, he should, if he remained of the same opinion as before, hold the statute unconstitutional? Why?

6. "In America, the powers of sovereignty are divided between the government of the Union and those of the States. They are each sovereign with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other." Discuss this statement briefly, explaining what it means, and how far you think it is true.

7. If a treaty between the United States and Japan provides that subjects of Japan shall have the same right to sue in State courts that citizens of the State have, and a State statute forbids its courts to entertain suits by one foreigner against another on causes of action arising without the State, what is the law of that State as to whether a subject of Japan has a right to sue in its courts another subject of Japan on such a cause of action? Why?

8. State the material facts and the points decided in either (a) The Slaughter House Cases; (b) The Civil Rights Cases; (c) *In re Neagle*; (d) Tarbell's case; (e) *Tennessee v. Davis*. Answer as to one case only.

9. A State statute imposed a penalty for allowing swine to run at large on the highway. A later statute provided that the question of permitting swine to run at large on the highway should be submitted to the voters in each county,

and that if in any county three-fourths of the votes cast were in favor of permitting it, the statute imposing a penalty should no longer be in force in such county.

Is one who in such a county after such a vote allows his swine to run at large liable to a penalty? Why?

10. Congress passed an act making it a crime to deprive any person because of his race or color of the equal protection of the laws. A negro in Alabama, falsely accused of murder, was lynched by a mob inspired by race prejudice and the fear that if he were brought to trial he would be acquitted.

May the leaders of the mob properly be punished under the statute? Why?

Examination in Criminal Law and in Criminal Pleading and Procedure.

(February 4, 1909.)

PROFESSOR HUGHES.

(N. B.—Explain fully, giving reasons for answers.)

1. A hands his servant, X, a ten-dollar bill, directing him to go to a nearhand drug store and purchase for A a box of Havana cigars and bring back the change. X purchases the box of cigars, receiving six dollars in change. Upon his return he hands A the cigars and five dollars, falsely representing that the cigars cost five dollars.

Of what crime, if any, is X guilty?

2. A, B and C are indicted and tried jointly for the murder of X. A is convicted of murder, B of manslaughter, and C is acquitted. A and B take an appeal, get a new trial and all three are put upon their trial again for murder. B and C each plead *antrefois acquit*.

Should the plea of each be sustained?

3. A leaves a suit of clothes at a tailor shop to be pressed. When the tailor begins pressing them, a couple of hours later, he discovers a ten-dollar bill in one of the pockets which A had forgotten about, and immediately puts the bill in one of his own pockets with the intention of keeping it.

Of what crime, if any, is A guilty?

4. A is indicted and tried for malicious mischief. The proof shows that he maliciously threw a brick with the intent to break a plate-glass window in B's store, and the brick hit C's horse in the head and put out one of its eyes.

Should A be convicted of the crime charged?

5. A, a peace officer, has a warrant for B's arrest on the charge of assault and battery, and a warrant for C's arrest on the charge of robbery. He arrests B and takes him toward the police station. On the way they meet C, and A tries to arrest him also but he starts to run away. B thereupon breaks loose and also starts to run away. Finding it reasonably necessary to shoot them to prevent their escape, A fires and kills them both.

Is A guilty of felonious homicide?

6. A and B conspire to burglarize C's residence. It is agreed that A is to enter C's house and steal goods and B is to remain near the house and give A warning when necessary. Pursuant to the conspiracy A and B meet at night and go to

C's house. On the way they meet D, and B robs him, A taking no part in it. Upon reaching C's house A breaks and enters it as agreed, and B remains near on the outside. Shortly after A enters he is surprised by C catching him in the act, and A immediately kills C.

(1) Is A guilty of robbery?

(2) Is B guilty of murder?

7. A is indicted and tried for burglary. His defense is voluntary drunkenness on his part, and also insanity. The Court instructs the jury that voluntary drunkenness is never a defense to a criminal charge; and it refuses to instruct the jury that insanity resulting from a diseased mind may constitute a good defense to a criminal charge, provided it renders the person incapable to resist committing the crime, even although such person at the time knows right from wrong as to the particular act. A is convicted of the crime charged.

Should A's conviction be set aside?

8. A is indicted for assault with intent to rob B. The Court refuses to give the following instruction: "To constitute the crime charged, there must be a union of act and intent; and if from all the evidence you have a reasonable doubt as to the defendant's having the intent to commit the crime charged, or a reasonable doubt as to his having a sufficiently sane mind to form such in-

tent, your verdict should be for the defendant.”
A is convicted of the crime charged.

Should A’s conviction be set aside?

9. A and B are indicted and tried for conspiring to assault C and to burglarize D’s residence. The crime charged is a misdemeanor. The proof shows that the agreement was fully carried out. The accused claim that the offense charged merged in the felony.

Should A and B be convicted?

10. A, B and C, while in Illinois, conspire to burglarize D’s residence, located in Indiana four rods from the boundary line between Indiana and Illinois. A is to cross over into Indiana and commit the burglary; B is to remain in Illinois, but near enough to D’s residence to warn A if necessary; and C is to receive the goods stolen from D’s residence after A brings them into Illinois, sell them and divide the receipts among all of them. The conspiracy is fully carried out.

Of what crime, or crimes, can A, B and C, respectively, be convicted, and where?

Examination in Evidence.

(January 29, 1909)

PROFESSOR HUGHES.

{N. B.—Explain fully, giving reasons for answers.}

1. A sues B in East St. Louis, Illinois, in the United States District Court on a judgment obtained by A against B in Detroit, Michigan, in the United States District Court. B's defense is based upon a Michigan statute. Judgment is given against B, and he takes an appeal to the Supreme Court of the United States.

(1) Should the United States District Court, sitting in East St. Louis, take judicial notice of the Michigan statute?

(2) Should the Supreme Court of the United States take judicial notice of that statute?

2. A claims curtesy in the real estate of his deceased wife, B. By statute he is entitled to curtesy, provided B left no issue by any former husband. The proof shows that B was divorced

from a former husband, C, in November, 1884; and that she married A in February, 1885. It also shows that a child, D, was born to B in July, 1885. D contests A's claim.

Is A entitled to the curtesy claimed?

3. A sues B for damages for breach of contract. The proof shows that by the terms of the contract A was to work for B for one year for a certain amount, and that B, without cause, had discharged A when only half the term was completed. B claims that A, at the time of his discharge, was offered a position by C, in the same neighborhood, at the same wages, in a like occupation, for the balance of the term; and that A refused the offer. The Court instructs the jury that "Before the plaintiff can recover in this case an amount of damages commensurate or equal to the wages agreed upon, the plaintiff must prove that he tried to obtain work during the latter half of the term agreed upon and failed to do so after making a reasonable effort." Verdict for defendant.

Is the Court's instruction reversible error?

4. Briefly discuss the following propositions as to their correctness:

(1) When the contention of a party to an action is supported by even a mere scintilla of evidence he is entitled to a submission of it to the jury.

(2) Whenever all the evidence before the jury, with all the inferences that reasonably may be drawn from it, is insufficient to sustain a verdict for the plaintiff, and such verdict if returned would have to be set aside, then the Court should direct the jury to return a verdict for the defendant.

5. A sues B for the reasonable value of certain services which he rendered to B. B sets up in defense that the services were rendered under a contract for a specified sum, and that the sum agreed upon has been paid to A.

Upon whom is the burden of proof?

6. A sues B on his negotiable promissory note. B pleads payment. The proof shows that C, the original payee, transferred the note to A after maturity.

Is an admission by C, while owner of the note, that B had paid it, admissible against A?

7. A sues the I. C. Ry. Co. for damages caused by the defendant company's negligence in running one of its switch engines into A's buggy as he was attempting to cross its tracks. The company pleads contributory negligence. A admits that before attempting to cross the tracks he failed to look either way for approaching engines. In view of A's admission, the Court instructs the jury to return a verdict for the defendant.

Should the verdict be set aside?

8. A sues the city of Detroit for damages caused to him by the negligence of the city in failing to keep properly lighted one of the approaches to a certain swing-bridge controlled by the city. Against objection, he offers testimony that a certain other person, under similar circumstances, at the same place and about the same time, was seriously injured.

Should the objection be sustained?

9. A, who is on trial for the murder of B, asserts his innocence and claims that B was murdered by C. In support of his claim he offers in evidence, against objection, a confession by C, made on his death-bed, to the effect that he alone murdered B.

(1) State the requisites of admissibility of a confession.

(2) State the requisites of admissibility of a dying declaration.

(3) Under what circumstances, if at all, is C's statement admissible?

10. A, as the next of kin, sues B in ejectment. B pleads A's illegitimacy, and offers in evidence, against objection, the following testimony:

(1) A declaration of A's illegitimacy by his deceased mother.

(2) A declaration of A's illegitimacy by A's mother's deceased sister.

(3) A declaration of A's illegitimacy by A's father, who has since become permanently insane.

(4) A declaration of A's illegitimacy by a legitimate son, since deceased, of A's father and mother.

(1) State the requisites of admissibility of declarations relating to pedigree.

(2) Which, if any, of the foregoing declarations are admissible?

Examlnation in Equity.

PROFESSOR GILBERT.

1. Professor Artazerxes Smith of X College, in 1907 applied for a Carnegie pension under the Carnegie fund for the pensioning of College professors. He stated in his application that he was 65 years old and had held the title of professor for fifteen years. It was discovered that he was 63 years old and hence was ineligible under the provisions of the trust. His application was rejected. In 1909, he again made application, being now eligible under all the conditions imposed. The application was approved by the trustees of X College but the trustees of the fund refused to grant him the pension, whereupon he filed his bill in equity.

Can he obtain relief?

2. If X gives Y a written option to purchase his land, the same expiring on April 5, 1900, and Y, on his way to buy the land, falls and breaks his leg. so that he does not arrive until April 6, and

then is without money, but obtains it by April 7 and makes a tender, (1) would equity find any branch of its jurisdiction adequate to give him any relief? (2) What if Y files his bill on June 7, 1907? (3) What if X had sold on April 4 to Z who knew of Y's plight, or (4) on April 6 to M, who knew of the expiration of the option, but of no further circumstances?

What relief in any instance would equity grant?

3. Explain the following proceedings and state when each will lie. (1) Discovery. (2) Ne Exeat. (3) Creditors' Bills. Does the existence of a right to a bill of discovery require or permit that a subsequent proceeding in the litigation shall be had in equity?

4. If X gives Y a mortgage on his realty and then sells to Z who first records, which is protected, Y or Z? What if the person whom you mention as preferred was aware, (1) when he paid his money, or (2) when he recorded, of the outstanding unrecorded instrument?

5. M was arrested charged with burglary. He seeks an injunction against the sheriff of the county and all court officials against the prosecution, alleging a mistake of identity. He also seeks an injunction asserting that he is unlawfully detained, and alleging that the committing magistrate had not been duly elected to his office, and further

seeks to enjoin such official from further discharging the duties thereof.

Should he win in either action?

6. The legal title to lot 5 stood in Hurlbut, but the real owner was Harrington, who negotiated a sale to Beale. Hurlbut, by Harrington's direction, conveyed to Beale, a note being given for half of the purchase price, payable to Hurlbut. The note was unpaid and Harrington files a bill in equity, asserting that he has a vendor's lien. Is this true? Were it true, what would happen to the lien were Beale or Hurlbut or Harrington to die or sell?

7. X held the first mortgage on B's lot 1, and Y held the second. Y afterward permitted B to take possession of the mortgage upon the pretext of having the mistake therein corrected. B at once had the mortgage discharged of record, presenting the evidence required by the statute in the State where the transaction occurred, namely: his own affidavit and the surrender of the mortgage itself. B thereupon borrowed further money of Z, who in good faith relied on the record, and gave him another mortgage. B's property is sufficient only to pay X and either Y or Z.

Which will be preferred?

8. Gordon, being the owner of block 102 in Bloomingville, gave a mortgage thereon to Thomas to defraud his creditors. Thomas deposited the mortgage itself with Williams to se-

cure a loan then made in good faith. Which is preferred, Thomas or the defrauded creditors of Gordon? What would you say as to Thomas' right to foreclose; or as to Gordon's right to redeem from a foreclosure sale, had one been secured by Williams?

9. P, who did not like it that his sister was earning her own living and thinking to influence her conduct, made a promissory note for \$5,000 payable to her order in two years. He visited her at her place of employment and said: "Here, M, take this. It is yours. You will never have to work again. I don't want you to and I hope you will quit right off." M was much overcome and did stop working at the end of the month. P died before the maturity of the note, leaving a family, and M brings an action on the note.

Can she recover? Is any equitable doctrine applicable?

10. Brownson by his will gave \$5,000 to be laid out in the purchase of lands for his daughter, Mrs. Hubbard. After Brownson's death, while the money was still in the hands of his executor, uninvested, Mrs. Hubbard died leaving a will bequeathing all her money to her son and all her realty to her daughter. Before her estate was settled, her two children were killed in an automobile accident. The son's will gave all his money to charity, and his land to the University of Z. The daughter's will gave all her money to her friend, Miss Bingham, and her realty to her aunt, Sarah Connor.

Who benefits from Brownson's original \$5,000 bequest?

Examination in Illinois Procedure.

(Third Year.)

DEAN HARKER.

1. A brings proceedings by attachment against B to collect a claim of \$600.00, alleging in his affidavit that B has departed from his usual place of abode in Champaign county, Illinois, and on due inquiry can not be found in this State, that he is concealed within this State, so that process can not be served upon him, that his last place of residence was Tolono, in said county, and that affiant after diligent inquiry has been unable to ascertain that B has any other place of residence.

State wherein the affidavit is defective.

2. In a suit in attachment against a non-resident defendant, begun in the circuit Court of Bond county, A and B, residents of Bond county and debtors of the defendant, are summoned as garnishees. A and B do not owe the defendants an amount sufficient to satisfy the plaintiff's debt, but

the defendant owns land situated in Shelby county. Representing the plaintiff, how would you proceed?

3. A dies intestate, leaving a widow and four minor children as his only heirs at law. He leaves personal property worth \$3000.00, debts amounting to \$6000.00 and 160 acres of land, on which his widow resides, valued at \$16,000.00. The widow desires to be appointed administratrix.

State in their order the proceedings necessary to a correct and complete administration of the estate.

4. State the most prominent differences between the extraordinary remedies, injunction, mandamus and quo warranto.

5. After the filing of a petition for a mandamus against a public officer and the service of a summons on him he resigns. Representing the relator, how would you proceed to make the mandamus effective?

6. How may the several rights of different parties to the same office or franchise be determined in one suit?

7. A, having recovered in ejectment against B, how may he recover for the *mense* profits by B, while in possession? Mention in detail the course of procedure.

8. Mention in their order the various steps in an action of replevin under the Illinois statute. How does the bond differ from an attachment bond?

9. In a habeas corpus proceeding the sheriff against whom the writ is directed makes a return showing that the petitioner is held in custody by him by virtue of a telegram received from the chief of police of St. Louis, Missouri.

Representing the prisoner, how should you meet the return?

10. A went into possession of 10 acres of land which formed a part of a 40 acre tract owned by B. The land before then was open and unoccupied. B forcibly takes possession of a tent in which A had been living for four months on the premises.

Can A maintain forcible entry and detainer? If you answer that he can what notice, if any, should be given to B?

Examination in Mortgages.

I.

Define:

- (a) Mortgage,
- (b) Equity of Redemption.
- (c) Waste.
- (d) Attornment.
- (e) Give four ways in which an equitable mortgage may arise.

II.

State the grounds on which the policy of the law forbids the conversion of a real mortgage into a sale as a conditional sale.

III.

Bill in equity to compel cancellation of notes and mortgage given by plaintiff to defendant. The consideration of the notes was the agreement of the defendant, at plaintiff's request not to

prosecute one who had embezzled from the defendant.

On what principles should the case be decided?

IV.

An action of assumpsit for the support of a woman and minor children. Defense is that the woman was the owner of a piece of land in the town of Reading, of the value of \$800.00, by virtue of a deed from one J. B. The deed on its face is an absolute deed, containing the usual covenants. Simultaneously with the execution of the deed an oral defeasance was entered into between the parties, showing the deed was intended as a mortgage.

This oral agreement was offered in evidence and objected to on the part of the plaintiff.

What should be the ruling of the Court and why?

V.

A tenant of the mortgagor in possession became such after the giving of a mortgage. The landlord sued the tenant for rent. The tenant, for defense, said that after the mortgage became forfeited by non-performance he attorned to the mortgagee and took a lease from him for the remainder of the term.

Would you sustain or overrule this defense, and on what ground?

VI.

The mortgagor in possession buys water wheels on the agreement with the seller that they shall be set up in the mortgagor's mill, but shall be and remain the property of the seller until paid for. Before payment the mortgagee brings foreclosure, and the seller attempts to remove the wheels.

What are the mortgagee's rights as to the wheels?

VII.

A mortgagor in possession sells timber from the mortgaged land without permission of the mortgagee. The buyer cuts and removes it. The mortgagee sues the buyer for conversion.

What can you say of the rights of the mortgagee under such circumstances?

VIII.

A mortgage recited that the mortgagee might in case of foreclosure receive in addition to the debt and costs one hundred dollars as liquidated damages arising from the necessity of foreclosure. The decree included this amount, and the mortgagor appealed, assigning the inclusion of this amount as erroneous.

How would you decide the case, and why?

IX.

The mortgagee having foreclosed, and in good faith and without negligence, supposing he has a clear title, makes valuable improvements upon the premises. The owner in the equity of redemption, who by accident was not a party to the foreclosure suit, and whose right of redemption therefore was not cut off, brings a bill to redeem.

What are the rights of the mortgagee as to the improvements made by him?

X.

What are the essential points of difference between the common law theory and the lien theory of the mortgage as affecting the rights of the mortgagee?

Examination in Personal Property.

MR. COSGROVE.

I.

Define:

- (a) Detinue.
- (b) Deadonds.
- (c) Confusion of goods.
- (d) Pledge.
- (e) Market overt.

II.

Plaintiff drives a herd of wild deer into an enclosure on three sides of which a high fence prevents the animals escaping. While the plaintiff is preparing to erect a fence upon the fourth side, thus entirely surrounding the animals, but before such fence is erected, the defendant fires upon the deer, killing three and causing the others to escape through the opening. Defendant carries away the deer which he kills. The enclosure is built upon public land. Plaintiff brings trespass.

Discuss rights of both parties.

III.

An action of trespass for removing coal from the land of plaintiff. Land is situated in Illinois. Facts show that defendant intentionally removed the coal knowing it to belong to the plaintiff.

The cost of mining the coal, that is, converting it into a chattel, is 50 cents per ton, and hauling to the mouth of the shaft and hoisting 30 cents per ton. The coal sells at the shaft mouth for \$1.80 per ton.

Presuming that the plaintiff makes out his case, what is the measure of his damages?

Would it make any difference if the cause of action arose in Pennsylvania, and if so, what?

IV.

Plaintiff hauls wheat to the elevator of the bankrupt, the wheat being kept in separate bins. The agreement with the bankrupt being that the wheat of the plaintiff shall be kept in a separate bin and not mixed with other wheat, and that when the plaintiff calls at the office of the bankrupt for a settlement, it shall be the privilege of the bankrupt to return the wheat deposited, or its equivalent in amount and quality, or to pay the plaintiff the market value of the wheat at that day. Nothing is said concerning the right of the bankrupt to draw wheat from the bin of the plaintiff. After bankruptcy the plaintiff demands the wheat of the receiver in bankruptcy, who refuses to turn it over.

What would be your advice to the plaintiff?

V.

Trespass de bonis asportatis, in which the plaintiff claims to recover for wood.

It appeared that a part of the wood taken by the defendant was from land indisputably belonging to the plaintiff. The other portion from land which the plaintiff claimed, but which on the trial was shown to belong to the defendant. The wood from both parcels of land was mixed and hauled away by the plaintiff. It was all afterward seized by the defendant.

The Court charged the jury:

“If a part of the plaintiff’s own wood was so mixed with the defendant’s wood in the same pile, either that the defendant did not know it or could not by any reasonable examination distinguish it, the taking of such part was not a trespass for which the action would lie.”

Discuss fully the correctness of this instruction.

VI.

A leaves his horse with B, a horse trainer, to be trained for a particular race at a future date. B expends labor and skill in the improvement of the animal, and on the day of the race asserts a lien upon the horse in the amount of \$50.00, which is admitted to be a reasonable charge. A refused to pay, and B keeps the horse. One month later A returns and tenders B the \$50.00 and asks for the animal. B claims an additional \$20.00 for feed

and care of the animal from the day of the race to the present time.

A consults you; what would you advise him to do?

VII.

One not the owner of a horse stops at an inn and stables the horse with the innkeeper. He afterward leaves, owing the innkeeper 10 pounds for his own board and 2 pounds for the keep of the horse. The true owner, learning of the whereabouts of the horse, comes to the inn and demands the animal, first showing clearly that he is the true owner. The innkeeper refuses to deliver up the horse until he is paid his entire charge or 12 pounds. The true owner, after consultation, tenders the innkeeper 2 pounds, the value of the animal's keep and threatens to bring detinue unless the horse is returned to him.

The innkeeper consults you; what is your advice?

VIII.

Action of tort for taking a quantity of calf skins. One count of declaration alleges title in plaintiff; another a lien for work done upon them. The skins had been taken by the receiver in bankruptcy.

The evidence shows that the skins were left with the plaintiff to be cured. Some time afterward the bankrupt, who owned the skins, called

for them and being informed that the plaintiff asserted a lien upon them for his work and labor, replied that he would be unable to pay the amount, but would sell them to the plaintiff. The plaintiff then purchased the skins. This sale was void, having been made only a few days prior to the filing of the petition in bankruptcy. When the receiver called for the skins the plaintiff said that he owned them by virtue of the sale.

What should be the verdict of the jury in this case?

Discuss fully the principle involved.

IX.

A, the owner of a furnished house, leases the house and furniture to B for a period of five years.

C, a sheriff, levies upon the furniture under an execution against B and removes same.

A brings an action of trover against C, the sheriff. Will the action lie? Give reasons for your answer.

X.

A lady while in a department store purchases an article and when about to pay for it drops accidentally and without her knowledge a bank note of the denomination of \$20.00 upon the floor of the aisle. She afterwards makes other purchases, and when about to leave the store intentionally places her purse containing \$100.00 upon the counter and forgets to take it with her. A porter

finds the \$20.00 bill upon the floor while sweeping the aisle; a salesman finds the pocketbook upon the counter. Both amounts are turned in to the manager of the store, who advertises the lost articles.

No one claims them. Afterward the manager refuses to return the moneys to the finders. Both finders come to you for advice; what is your advice? Give reasons.

Examination in Real Property.

(Second Year.)

ASSOCIATE PROFESSOR NORTHRUP.

1. A owned land on the east bank of the Mississippi river. B owned land adjoining A's land on the east. The river gradually encroached upon and covered A's land and part of B's land. Later an island was formed in what was formerly A's land. Still later the water gradually and imperceptibly retreated until it reached its original position.

Who owns the land formerly belonging to A?

2. A was tenant for life of a farm. X was remainderman in fee. A died leaving a will purporting to devise the farm to B. B, in the belief that he owned the farm, told C that the latter might occupy it without charge. C occupied the farm as tenant at will of B for twenty years.

Who had title to the farm at the end of twenty years?

3. A made a will devising six hundred acres of land, therein described and owned by him, to B. The land was wild land, about half of it being wooded. B entered, cultivated two hundred acres of the open land and used one hundred acres of the wooded land for lumbering purposes. The remainder of the tract he did not use or occupy. After twenty years A's heir brought ejectment for the six hundred acres of land devised by the will. It appeared that A's will was invalid for lack of witnesses and had never been probated.

What result in the ejectment action?

4. A has been using a way from his own land across B's adjoining land to the highway for twenty years.

(a) Has he acquired a prescriptive right in Illinois if the user is wholly unexplained and there has been nothing said about the user by either A or B?

(b) Has he acquired a prescriptive right in Illinois if A made the user under claim of right but B protested against it but did not physically interfere or bring any action?

5. (a) A and B held premises under a sealed lease from C to expire in 1900. In 1895 A and B wrote to C saying that in case A and B did not renew their partnership when their present contract expired in 1898 they would like to give up the lease. C replied by letter that in the event men-

tioned they might give up the lease in 1898 if they desired. In 1898 A and B desired to give up the lease but C now refused.

Can C hold A and B for rent to 1900?

(b) Suppose in 1895 the parties had made an absolute agreement that A and B should quit in 1898 and in consideration thereof had paid a somewhat larger rent for the three years.

Are they liable as tenants of C after 1898?

6. Land was sold by reference to a map. On the map the land sold was represented as bounded by the side of the highway and the amount of land called for by the deed corresponded to the amount of land so represented on the map. The grantee claimed title to the center of the road, the fee of which was in the grantor when he made the deed.

Did the grantee take title to the center of the road?

7. On May 1, 1900, A leased premises to B for five years "at an annual rental of \$1,200, payable \$100 a month" as stated in the lease. At the end of the term B remained in possession, nothing being said about the lease, and each month B sent to A a check for \$100, saying "Enclosed find check for this month's rent." On March 1, 1907, A gave B written notice to quit the premises on May 1 following. B refused to vacate.

Can A recover the premises from B?

(a) At common law?

(b) Under the Illinois statutes?

8. A owned a lot, on the eastern portion of which he built his house with a barn in the rear, constructing a driveway that ran along the west side of the house. On the second story of the house he built a veranda that hung over the driveway. Later, A sold the eastern portion of his lot, the division line running close to the house. The only way to drive from the barn in the rear of the house was over said driveway.

Has the purchaser the right to use the said driveway and maintain his veranda over it?

9. A sold B land with covenant that it was free from encumbrances. B sold to C with similar covenant. D held a judgment which was a lien on the land and which C was obliged to pay.

(a) Can B recover from A?

(b) From whom can C recover?

10. Defendant conveyed land to plaintiff with covenant against encumbrances. There was in fact a judgment which was a lien on the land, and the land was sold on execution on the judgment. Defendant obtained title to the land after the execution sale. Plaintiff brought action on the covenant. Give argument for defendant and your decision.

Examination in Trusts.

PROFESSOR CLARK.

1. A conveyed by deed a piece of land to B upon trust to sell and pay over the proceeds to C.

Discuss C's remedy;

(a) if, upon being told of the conveyance, B refuses to do anything;

(b) if, after undertaking to sell the land, B neglects to do so;

(c) if, after selling the land, B refuses to turn over the proceeds to C;

(d) if, after selling the land, B deposits the money in a bank in his own name and the bank unexpectedly becomes insolvent.

2. T, having money of his own as well as trust money to lend, loaned \$100 of each fund to O, taking two non-negotiable notes executed by O. The one that he held in trust for C, T endorsed to X, who paid value in good faith without notice of the trust. T delivered the other note as a gift to

Y, a friend of his. T died before either note became due.

Discuss the rights of X and Y.

3. A bequeathed a flock of sheep to B upon trust to sell and invest the proceeds in government securities to C. After A's death, but before the sheep were sold, X stole them, and having sold part of them, invested the proceeds in a lot. C wants the lot and the rest of the sheep.

How will he proceed?

4. A borrowed of B \$1,000 and conveyed to him a piece of land to hold as security for the loan. He also conveyed to him another piece to hold for A until A asked for reconveyance. A repaid the \$1,000 and asked for reconveyance of both tracts.

Is he entitled?

5. A delivered a horse to B in trust to be delivered to C the following Saturday.

Discuss C's remedy against B, if B refuses to deliver the horse on Saturday.

Suppose B had sold the horse to X, who paid full value without notice of C's rights, what would be C's remedy?

6. T, being trustee for C of two pieces of land, conveyed one tract in violation of his trust to X; he was disseized of the other by Y.

Discuss C's remedy in each case.

Suppose that C did not find out about either the disseisin or the breach of trust for over twenty years, how would this affect his rights?

7. D, a devisee under A's will, suspecting that A was about to revoke his will, succeeded in causing A's death by poisoning. After the death of A, but before D's crime was found out, D conveyed half of the property to X, a bona fide purchaser, for value.

Who is entitled to the land devised to D?

Examination in Torts.

(January, 1909.)

1. A, while driving on a highway, lost control of his horse. The horse in running away collided with a buggy belonging to B, damaging it seriously. A then succeeded in regaining enough control of the horse so that he was able to keep him from running into a large crowd of people. In order to do this, however, he was compelled to drive against C.

Discuss the rights of B and C against A.

2. A and B were crossing a street, exercising due care for their own safety. A motorman carelessly drove a street car so near them that A was struck by the car and both A and B received severe nervous shocks.

Discuss A and B's rights against the street car company.

3. Discuss the correctness of this statement:

“Every imprisonment includes a battery and every battery includes an assault.”

Illustrate.

What is meant by the statement: “The law infers damage?”

4. A saw X and Y in danger of being run over by a railroad engine. He grasped X by the collar and pulled him off the track. He had time to pull Y off, but did not do so, and Y was struck and suffered personal injuries. X sues A for the battery committed on him and Y sues A for negligently allowing the engine to strike him.

Discuss the liability of A to each.

5. A and B attacked X, A's attack being a felonious one, with intent to kill. An hour later X and Y arrested A and B without getting warrants.

Discuss the liability of X and Y to A and B.

6. A borrowed two fountain pens of B to use for a week. While using them one was accidentally destroyed; the other was at the end of the week returned to B. A then for the first time learned that B did not own the pens, but that X, the owner, had left them with B for safekeeping.

Discuss A's liability to X.

7. S had an auction sale of goods and A was his auctioneer. By mistake of S, two parcels of

goods belonging to T were also put up for sale. Both parcels of goods were declared sold by A, but P, the purchaser, took away only one of the parcels. S, A and P all acted in good faith, thinking the goods belonged to T.

Discuss their liability to T.

8. A wrote a letter to B, charging him with being a forger and embezzler and threatening to expose him. The charge was false, but B, who was very sensitive, became ill as a consequence of reading the letter.

Discuss B's remedy, if any, against A.

Examination in Wills.

ASSOCIATE PROFESSOR NORTHRUP.

1. Testator owned real property in Urbana, Ohio, and also in Urbana, Illinois. He directed his will to be drawn leaving the property in Urbana, Ohio, to A and the property in Urbana, Illinois, to B. The attorney drew the will giving, by the first clause, "*To A, my real property in Urbana, Ohio,*" and by the second clause "*to B, my real property in Urbana, Ohio.*" In the second clause the word *Ohio* was inserted by mistake for the word *Illinois*.

The above facts being shown, can the mistake be corrected in Illinois?

2. A will gave to A a legacy of "\$10,000 in 100 shares of par value of \$100 of stock of some good railroad company to be selected from my securities." The will then added "Among my papers will be found a memorandum of the various securities I have selected for the payment of the several legacies." Such a paper was found with

the will; it set apart among other things, to A "\$10,000 or 100 shares" of a certain railroad stock.

Can effect be given to the memorandum in determining which shares A takes if it be proven that the memorandum was written after the will was executed?

Give the best argument that you can in opposition to your answer.

3. Assuming in question 2 that it was proven that the memorandum was written before the will was executed, can effect be given to the memorandum in determining what shares A takes?

4. A testator by his will left his entire estate to his wife. She was one of the two subscribing witnesses.

What disposition would be made of the estate under the Illinois law and why?

5. Testator signed his will in the presence of the witnesses, sitting at his desk in his office, and duly requested the witnesses to sign the same as witnesses. The desk was a roller top desk and stood in the center of the room. Another similar desk stood in the room, opposite testator's desk, the two desks standing back to back, against each other. The witnesses took the will to the other desk and in turn signed it there, sitting at the desk. The testator rose from his chair and stood in front of his desk and could see the top of the head of each witness as he signed, but no more,

the testator's view of the rest of the body of the witness and of the paper being cut off by the tops of the desks.

Was the will well witnessed?

(a) By the general rule?

(b) In Illinois?

6. Testator in his last illness quarrelled with the chief legatee under his will and said "I will revoke my will." He took the will in his hand and the legatee snatched at the will in an attempt to obtain possession of it and seized the will at one end while the testator held it by the other. Each endeavored to gain possession. In the struggle that ensued the will was torn across the middle, the legatee having possession of one part and the testator of the other part. The testator then said: "Well, that revokes it anyway." He then dropped the part of the will remaining in his hand. The legatee picked it up and preserved it. Testator soon after died.

Was the will revoked?

7. A will released "all demands against persons named in this will." A codicil republished the will and gave a bequest to defendant, who had been indebted to testator on a promissory note. The executor brought action against defendant on the note.

Who should succeed?

8. In 1890 X was owing testator \$1,000. Testator made his will in which he said: "I give and

bequeath unto my friend, X, the \$1,000 he owes me." In 1895 X paid the \$1,000 to the testator's agent, who had power to receive moneys in discharge of claims due testator. In 1890 the testator, in ignorance of the fact that the claim had been paid, made a codicil to his will in which he said: "I give my friend, X, another \$1,000 in addition to what I have given him by my will."

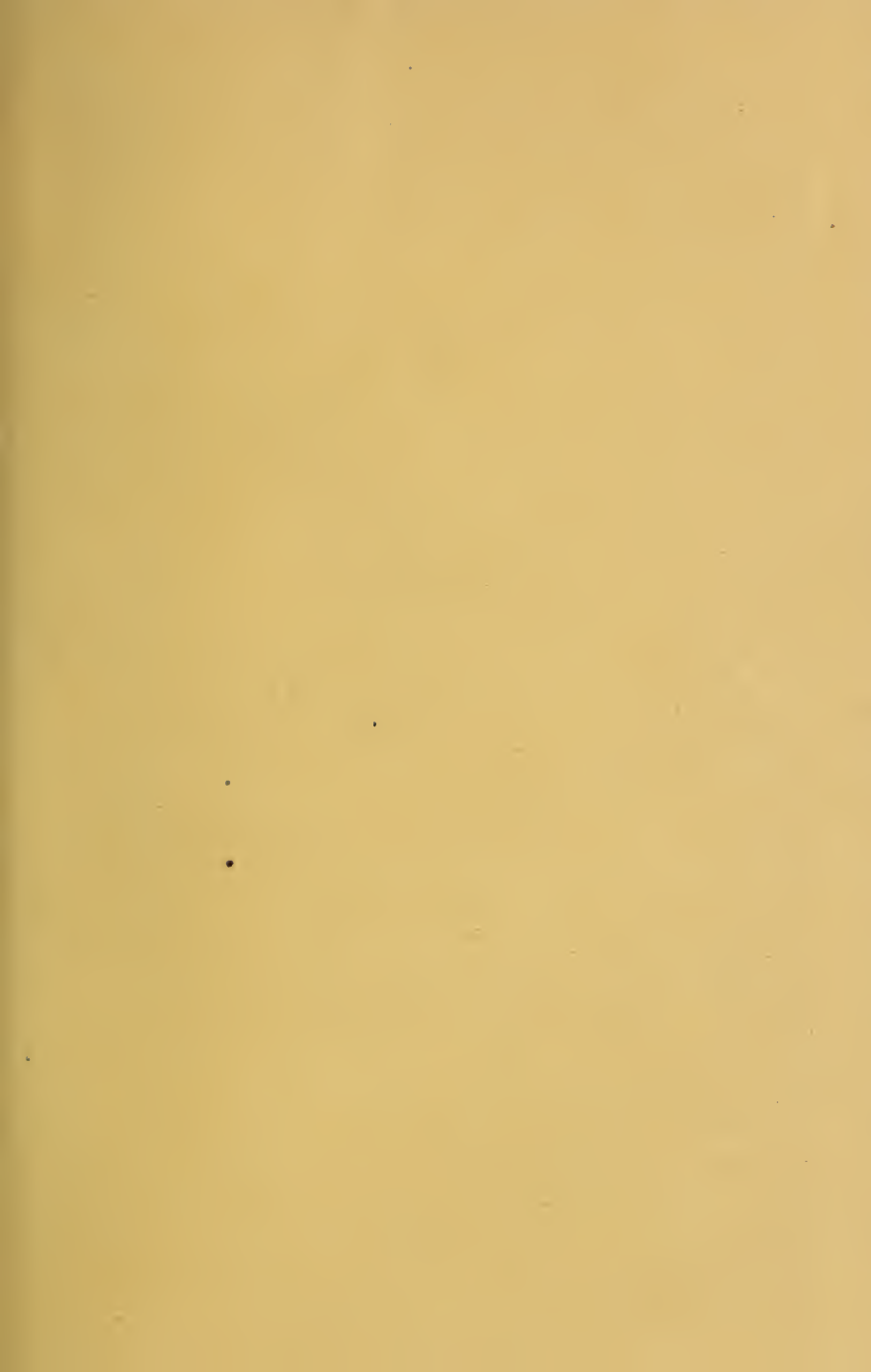
To what is X entitled under the testator's will and codicil?

9. A will made A residuary legatee. Later the testator made a codicil in which he said: "I do hereby give B one-fourth part of the residue of my estate." B died in the testator's lifetime.

What disposition should be made of the one-fourth of the residue given by the codicil to B?

10. X was appointed executor under a will and was left a legacy, by the will, of bank stock worth \$10,000. X, three weeks after proving the will and qualifying as executor, took the stock and the will to Y, who held a mortgage of \$5,000 on X's house; showed the will to Y and transferred the stock, endorsing the certificates as executor and individually, to Y in consideration of a discharge of the mortgage and \$5,000 in cash. Y made no inquiries beyond reading the will and asking X if the estate was solvent. X said that it was. In fact the estate was insolvent and a bill in equity was brought to have the transfer of stock to Y set aside and the stock applied to the payment of the debts of the estate.

What should be the result of the suit?





[Entered February 14, 1902, at Urbana, Illinois, as second-class
matter under Act of Congress of July 16, 1894.]

LAW EXAMINATIONS

Papers used at the

SECOND SEMESTER EXAMINATIONS

1908 - 1909

— IN THE —

COLLEGE OF LAW

— OF THE —

UNIVERSITY OF ILLINOIS

June, 1909

UNIVERSITY OF ILLINOIS

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INFORMATION.

For the printed announcement of the courses, entrance requirements, dates of examinations, requirements for graduation, etc., and for other information, address Barry Gilbert, Secretary of the College of Law, University of Illinois, Urbana, Illinois.

Examination in Carriers.

June, 1909.

PROFESSOR GREEN.

(Give concise reasons for every answer.)

1. In the following cases, the articles in question were lost or destroyed without fault on the part of those who were in possession of them.

Is there liability for the loss?

Answer separately as to each case.

(a) A barge laden with coal, in the exclusive possession of a tug to which it had been delivered to be towed to St. Louis.

(b) A trunk delivered for transportation to a railway station to the driver of a cab standing for hire at a street corner.

(c) Logs delivered to a public log driving company to drive down stream.

(d) A telegram in the hands of the company's delivery boy on his way to deliver it to the person to whom it is addressed.

(e) A parcel being carried for a customer to

a certain address by a boy employed by a company which maintained a public messenger service.

(f) A cargo of wheat in course of transportation under a contract with a single shipper for a voyage from Duluth to Buffalo, by a ship-owner who made a business of contracting for the carriage of cargoes on the lakes wherever business offered.

2. (a) A, having \$1,000 in gold, hid it in a trunk for safe keeping. Later, having forgotten about the money, he packed his trunk with necessary clothes and delivered it to a railroad company to be carried as baggage on the train with him. He bought a ticket, and went on the train, but by negligence of the railroad company the trunk was lost on the way.

Is the company liable for the \$1,000?

(b) B, having \$1,000 in gold, hid it in a bale of hay for safe keeping. Later, having forgotten about the money, he delivered the bale of hay to a railroad to be carried to a distant point, promising to pay whatever freight might be reasonable. Nothing was said as to the character of the article shipped, and no receipt was given for it. Without negligence of the railroad company the hay and money were lost.

Is the company liable for the money?

3. Answer either (a) or (b). (a) C notified a railroad company to provide a cattle car ten

days from that date to carry a carload of cattle which he was going then to ship. The railroad answered that they could furnish him no car for a month, and failed to provide a car within that time. All its cattle cars were needed to supply shippers who had ordered cars before C did, except certain cars which it had built under a contract with a packing company by which it was agreed that the packing company should ship a certain number of cattle each week, and that in return these cars should be reserved for its exclusive use so that it might never be delayed for want of cars. These cars were then idle.

If C has been delayed in shipping his cattle for want of a car, has he a cause of action against the railroad company?

(b) What is the common law doctrine regarding the right of a common carrier to discriminate between shippers as to rates?

4. X, at Chicago, bought a ticket over the Wabash R. R. to St. Louis, checked his trunk, which contained ordinary baggage, and took the next regular train for his destination. The railroad accidentally put the trunk on a train bound for Detroit, and at Detroit transferred it to a train for St. Louis. In passing through Indiana, the train was struck by lightning and the trunk damaged.

Is the railroad company liable?

Would it make a difference in your answer if the trunk had been damaged by lightning while

being carried to St. Louis by the usual route from Chicago, but after a wanton delay of a day in starting it on its journey?

5. A crate of peaches was delivered to the American Express Company at Champaign to be delivered to William McDougal at Springfield. The express company caused them to be carried by railroad train. The train was delayed one day by a wreck due to the railroad company's negligence. When it approached Springfield a race riot broke out. The militia were called out but could not suppress the riot for two days, and during that time the rioters forcibly prevented the peaches from being brought into the city. When they did arrive the express company's agent in Springfield found that there were several William McDougals there, and it took one day more to find out which was the person intended by the shipper. Each of the four day's delay caused the peaches to deteriorate.

Is the express company liable for any of the damage, and, if so, for what part of it?

6. An article was delivered to a common carrier for transportation under agreements made in consideration of a reduced rate of freight

(a) that the carrier should not be liable for any loss not due to negligence;

(b) nor for any loss due to negligence, unless the negligence were gross;

(c) that the value of the article was \$50, and that in case of loss, though negligent, the carrier's liability should not exceed that sum;

(d) that the carrier should not be liable for any loss, though negligent, unless claim were made within thirty days after the claimant discovered it.

What validity have these agreements?

7. A, having received an order for eggs from Y, in Chicago, shipped eggs by railroad, and took two bills of lading, one a duplicate of the other, by which the railroad promised to carry to Chicago and there deliver to A's order, and to notify Y of arrival. A sent one of the bills unindorsed to Y, with a letter saying, "I have shipped you the eggs you ordered, as per the enclosed bill of lading." The carrier delivered the eggs to Y, on his demanding them and showing the bill of lading and the letter. A had indorsed the other bill of lading in blank and sent it to his friend Z, with instructions to call on Y, and deliver it to him on Y's paying for the eggs.

Has A a cause of action against the carrier?

8. A man named James Peter Morgan lived in New York city. He wrote to London to a dealer in rare books asking to have certain books sent to him on credit. He intended to keep the books without paying for them, and signed the letter J.

P. Morgan, hoping that the order would be filled in the belief that it was the signature of an eminent financier of that name. The dealer sent the books by express because he supposed he was dealing with the financier. They were directed to J. P. Morgan, New York, and the swindler obtained them from the express company by proving that his name was J. P. Morgan and that he had ordered the books.

Is the express company liable to the shipper?

9. When does the common carrier's exceptional liability for damage to goods carried come to an end in the case of

- (a) A carrier by vessel.
- (b) A railroad.
- (c) An express company.

10. A delivered 100 barrels of lard to a common carrier by steamboat, to be carried to a point on a river 500 miles away, and there delivered on payment of a freight of 50 cents a barrel. When the steamboat reached a point within ten miles of her destination it was found that cold weather, which had set in unusually early, had so frozen the river that it would be closed to navigation until spring. A demanded that the goods be delivered to him without his paying freight. The carrier, who was able and willing to wait and complete the

voyage in the spring, refused to deliver except for full freight. A took the goods. The carrier sued for freight.

What, if anything, is he entitled to recover?

How would you answer if the carrier had not been able or willing to wait and complete the voyage in the spring?

How if the carrier had been able and willing to wait and complete the voyage if required, but at the shipper's request had delivered him the cargo, nothing having been said as to freight?

Examination in Commercial Law (Law B).

(June 9, 1909.)

PROFESSOR HUGHES.

(N. B. Explain fully, giving reasons for answers.)

1. A offers B \$175 for his horse. B replies that he will think the matter over and let him know soon. Three days later B writes A that he will take \$200 for the horse, provided A accept the offer by return mail. A neglects to answer for two days and then accepts B's offer.

Is B bound by A's acceptance?

2. A writes B that he will pay him 75 cents a bushel for 100 bushels of corn. B decides to think the matter over for a few days. The next day A writes B revoking the offer. This letter reaches B an hour after B has posted a letter to A accepting his offer.

Is A bound by B's letter of acceptance?

3. A, a minor, whose services as bookkeeper are worth \$40 a month, makes a contract with B to serve him in that capacity for one year at \$50 a month. At the end of three months A quits without cause.

(a) Is A liable to B for breach of contract?

(b) How much, if anything, is A entitled to receive for his services?

4. A, who resides in Champaign, is indebted to B who lives in Chicago. B writes A to remit the amount of the debt by bank draft, addressed to him. A does so, but the draft falls into the hands of another person of the same name as B, also a resident of Chicago, who converts the proceeds to his own use.

Who must bear the loss, A or B?

5. A promises to marry B three months from date. One month after making the promise to B A marries C, and B immediately sues A for \$5,000 damages for breach of his promise to marry her.

Will B's action fail because brought too soon?

6. A is a bona fide purchaser of a negotiable promissory note.

Which, if any, of the following defenses will defeat an action by him against the maker?

- (a) The maker a minor;
- (b) Illegal consideration;
- (c) Signature of maker forged;
- (d) Instrument procured by fraud;
- (e) Body of note altered without fault of maker;
- (f) Note paid before transfer to bona fide purchaser.

7. The firm of A & Co. is dissolved by the voluntary retirement of A, who causes notice of the dissolution to be published in a newspaper of general circulation at the place where the business is carried on. He also mails personal notice to X and others who had previously sold goods on credit to the firm. The written notice to X miscarries through no fault of A, and X, without any knowledge of the dissolution, subsequently sells goods to the other members of the old firm on the credit of that firm.

Is A liable to X for the goods sold?

8. On March 15th the directors of a corporation declare a cash dividend of 5 per cent. payable April 1st. On March 20th A sells his stock to B who immediately has it transferred to himself upon the books of the company.

Who is entitled to the dividend, A or B?

9. A, a Champaign merchant, orders goods of B, a Chicago wholesaler, directing him to ship them by the I. C. R. R. B promptly ships the goods as directed and upon the ordinary terms, the bill of lading being in B's name.

Who has the risk of loss during transit, A or B?

10. A writes B the following letter: "My son William desires to add a stock of groceries to his business at this place. To enable him to do so I am willing to be responsible for the amount of groceries he may order from you." B sells A's son on credit groceries amounting to \$500, and a month later he sells him on credit some more amounting to \$100.

(a) Does A's letter constitute a continuing guaranty?

(b) Is a surety released by lack of notice of the principal's default?

Examination in Court Practice.

DEAN HARKER.

1. Draft an indictment charging James Hall with burglarizing the store house of William Jones in Urbana and stealing four coats, four pairs of pants and four vests, valued at \$100. To the count for burglary add one for receiving the goods, knowing them to have been stolen.

2. If, upon the trial of the defendant, Hall, the jury should return a verdict, "We, the jury, find the defendant guilty of receiving stolen goods and fix the value of them at \$80," would the defendant have any legal grounds against the entering of a judgment against him?

If so, what kind of a motion should he make and why?

3. A, B, C, D & E incorporated the Tolono Telephone Company with capital stock of \$10,000, one hundred shares at \$100 each. Each subscriber took twenty shares. It was agreed that no subscriber should dispose of his stock without the

consent of the president and a majority of the directors. A by-law to that effect was unanimously adopted. A, having sold his twenty shares to X, applies to the president and directors for a transfer, but they refuse, contending that X is obnoxious to the other stockholders.

What remedy has A, if any?

4. A obtained a tax deed to a part of B's property. The description of the property contained in the deed, and in the tax sale record, was N. pt. Out Lot 4, City of Champaign, Illinois. After procuring his deed, A called upon B to surrender possession. B refused. A claims that there was a complete transfer of the title to the property to him.

How should he proceed for the purpose of having that question tested?

A, contending that B's deed is a mere cloud upon his title, how should he proceed to have the question tested?

5. A property owner in a city adjacent to a street where a tunnel is being constructed suffers injury by reason of depreciated rents because of the fact that the street is torn up and large quantities of building material are allowed to remain standing in the street for a period of several months.

What remedy, if any, has he against the city?

What is the test upon the question of an adjacent property owner recovering damages in such a case?

6. The owner of an office building installed passenger elevators for the convenience of his tenants. A person not a tenant but having business with a tenant enters the elevator and, because of the operator handling it carelessly, is injured.

What right, if any, has he in the premises?

If he has any what form of action should he bring?

7. The plaintiff brings suit upon a policy of insurance covering the life of his father. The policy provided that premiums should be paid in bi-monthly installments of \$10 each. The policy required the insured to pay at the office of the insurance company, but the local agent was in the habit of calling upon policy holders for their bi-monthly payments. The insured tendered to the local agent a \$20 bill on the 1st of July, 1907. The agent was not able to change it but said he would be making the rounds the next week and would collect when he called the week following. When the agent called the following week the insured was temporarily out of town and on his return home three days afterwards he died suddenly of heart trouble. When the plaintiff made proofs of death and demanded payment of the insurance company on the policy of \$3,000 payment was re-

fused upon the ground that the policy had been forfeited for non-payment of the July, 1907, premium.

State the course of pleadings necessary to raise the issue as to whether the right of forfeiture had been waived.

State what, in your opinion, under the circumstances constituted a waiver of the right to declare a forfeiture.

Examination in Common Law Pleadings.

DEAN HARKER.

1. A sues B in assumpsit, claiming damages for failure to deliver to him one thousand bushels of wheat according to contract. B pleads, admitting the contract, but avers that A has suffered no damage. To the plea A files a general demurrer.

For whom should judgment be rendered? Why?

2. A brings suit against B for assault and battery. What form of action should he use? To the declaration B pleads that if he hit and hurt A he did it in his own defense.

On special demurrer to the plead what should be the judgment and why?

3. To A's declaration which is bad simply in form B files plea which is bad in substance. A files a replication which is bad in form. On special demurrer the court is asked to search the record.

For whom should judgment be rendered and why?

4. To A's declaration in debt for goods sold and delivered B pleads infancy. Replication that the goods were for necessities. Rejoinder, B had paid for all of the goods that constituted necessities before the suit. General demurrer.

What judgment and why?

5. Action of assumpsit by A against B, the declaration being insufficient in substance. B pleads in abatement, his plea being defective for the reason that it fails to give a better writ. A demurs and B claims judgment because the declaration is defective.

Who is entitled to judgment?

6. A sued B and sureties in debt on a bond conditioned on B's turning over to A all money collected for A. As a breach it was declared that B collected of C, a debtor of A, \$400 which he failed and refused to turn over to A. The defendants pleads performance.

Should the plea conclude with a verification or tender issue?

Issues being taken on the plea, could the defendant introduce proof that after collecting the money of C he deposited the same with A's bankers and that the bank failed the next day, all of which B notified A of?

7. B owes A \$500 borrowed money due January 4, 1909.

Draft a declaration for the April term, 1909, of the Circuit Court of Champaign county, Illinois.

8. A sues B alleging that B is indebted to him in the sum of \$500 on a promissory note. B pleads that A induced him by fraud to sign the note. A replies that afterwards B in consideration of \$100 agreed not to set up the plea of fraud.

On demurrer what should be the judgment?

9. What is meant by duplicity in pleading? How may the rule against duplicity be avoided where a party desires to sue for two or more causes of action in one suit? where he desires to interpose two or more defences to one action?

10. What do you understand by the term, "Election of Remedies?"

Illustrate in actions of tort.

In action for contract and tort.

Examination in Constitutional Law.

(June, 1909.)

PROFESSOR GREEN.

(Answer questions 1, 5, 9 and any five others.
Give reasons concisely.)

1. A State statute imposed an annual tax on all property, real or personal, within the State, and on all residents of the State in respect to their personal property situated without the State. Is the tax valid as applied to

(a) a tax on a debt due to a resident from a non-resident?

(b) a tax on a resident in respect to his cattle on a farm in another State?

(c) the property interest of a non-resident mortgagor in a chattel within the State mortgaged as security for a debt due from a non-resident of the State?

(d) a bond issued by a city of the taxing State contained in a safe deposit box within the State, but owned by a resident of another State?

(e) a promissory note contained in a safe deposit box within the State, but owned by a resident of another State, the maker of the note being a resident of the taxing State?

(f) a United States bond owned by a resident and within the State?

(g) a bond of another State owned by a resident of the taxing State and within the State?

(h) horses, carts, building materials and tools owned by one who has contracted with the United States government to build a postoffice building and actually used in building it?

(i) a patent right?

(j) a stock of patented articles manufactured and held by the patentee for sale under his patent right?

2. A city ordinance provided for the grading and paving of a certain street, the cost of the work to be assessed on abutting lots in proportion to frontage as determined by the board of assessors, whose determination as to facts was to be final, no appeal therefrom being allowed to any judicial body. Notice of the time, place and manner of assessment was to be given by publication in local newspapers and by posters in public buildings and on trees along the street, and any person interested was to have a right to present evidence and argument before the board.

(a) Can the assessment be enforced, consistently with the constitution of the United States, against a lot whose owner had no actual notice of the ordinance or assessment, and whose frontage the board has overestimated, because of mistake in measurement, to such an extent that the assessment on it exceeds the benefit it derives from the improvement?

(b) Could the assessment be enforced, consistently with the constitution of the United States, if the ordinance directed the assessors to assess on each lot half the cost of paving and grading that part of the street on which it abutted, and the cost per foot of the improvement, by reason of culverts and inequalities of grade, would probably be much greater in front of some lots than in front of others?

3. Suppose that after the San Francisco earthquake and fire an act of the California Legislature provided that to aid the rebuilding of the city, the city might, at the request of the owner of any building destroyed, who borrowed money and gave security to use it in rebuilding, guarantee to the lender that the loan would be repaid.

Would a guarantee so given be enforceable at law?

4. Would the following acts of Congress be valid?

(a) An act establishing a reasonable maxi-

imum rate for long distance telephone calls between points in different States.

(b) An act authorizing the transportation of cattle suffering from infectious disease from one State to another and their sale in the latter State, in spite of any State law forbidding their importation or sale.

(c) An act forbidding interstate commerce in intoxicating liquor.

(d) An act forbidding the manufacture of intoxicating liquor intended for export.

(e) An act forbidding interstate commerce in goods made by child labor.

5. Would the following State statutes be valid?

(a) A statute requiring all cattle entering the State to stop at quarantine for inspection, and if found to be infected with contagious disease to remain there until danger of contagion was over.

(b) An act forbidding the importation of intoxicating liquor.

(c) A statute fixing reasonable maximum rates for railroad transportation, local and interstate.

(d) A statute requiring railroads to publish all rates, local and interstate, by posting them at stations.

(e) An act taxing all railroads five per cent of their gross receipts in lieu of property taxes.

6. In *R. R. Co. vs. Husen*, 95 U. S. 465, it was said: "We admit that the deposit in Congress of the power to regulate foreign commerce and commerce among the States was not a surrender of that which may properly be denominated police power."

In *Henderson vs. Mayor*, 92 U. S. 259, it was said: "Nothing is gained in the argument by calling it the police power. * * * whenever the statute of a State invades the domain of legislation which belongs exclusively to the Congress of the United States it is void, no matter under what class of powers it may fall."

Comment on these statements.

7. The State of Illinois imposed a license tax of \$100 on all selling agents doing business in the State. A was employed to sell by sample in Illinois shoes to be shipped from Massachusetts by his employer, X, a Massachusetts shoe manufacturer.

Must A pay the tax?

Would it make a difference in your answer if A's employment were to sell shoes to be shipped from a warehouse in Chicago, to which they had previously been sent from Massachusetts for the purpose of being so sold?

8. Louisiana issued bonds and failed to pay them at maturity because a statute passed after their issue directed that they should not be paid. A citizen of Louisiana sued the State in a Federal Court, alleging that the statute was invalid as impairing the obligation of contract.

Does the case fall within the judicial power of the United States?

9. In an action of tort for battery in a State Court the defendant pleaded that he was an internal revenue collector of the United States, engaged in the performance of his duty at the time of the battery; that plaintiff was an illicit distiller of whisky, and assaulted defendant, fearing defendant was about to arrest him, and that thereupon defendant committed the battery complained of in self defense.

May Congress constitutionally authorize a removal of the case to a Federal Court?

10. Enumerate the cases which Congress might constitutionally permit to be brought in a United States Circuit Court.

Examination in Contracts.

(June, 1909.)

PROFESSOR GILBERT.

1. Black owed White \$500, who owed Green \$540. B agreed with G that he would pay G the \$500 in discharge of W's debt to G. The payment was duly made. When W learned of it, he repudiated B's act.

What are the rights of the three various parties?

If W had been present and had assented, what would have been the rights of the parties?

If W had subsequently assented after B's promise was made and agreed to by G, would B's debt to W have been discharged? What would be the consideration?

2. The Star Lecture Course of the University of X sold to Davis a seat for a series of advertised lectures, by Gov. Jackson of Wisconsin, A, B, C, D and E, for \$2, to be paid for one day after the last number. Gov. J. was ill and was unable to appear. The managers of the Course substit-

uted instead the Hon. B.W. Jennings, widely known as an orator and public man, who delivered a lecture. The lectures by A, B, C, D and E, were given as advertised. Davis did not attend the Jennings number and refused to pay anything. He did attend the other numbers.

What are the rights of the managers of the Lecture Course?

3. On April 1, 1907, Wood borrowed \$15,000 from Cole and gave him a mortgage payable April 1, 1910 on his farm, to secure the debt. Wood, June 1, 1908, contracted to sell the fee to Steele, who agreed to pay Wood \$6,000 in equal installments during the next three years, and pay the mortgage debt when it should become due. After paying \$2,000, Steele asked to be released from the contract by Wood. The latter assented and the contract was cancelled May 1, 1909, upon Wood's refunding \$1,000 to Steele.

What are Cole's rights against Steele?

"CHAMPAIGN ILL., May 1, 1908.

4. We jointly promise to pay \$1,000 to Abner Lewis and Jacob Bauer, at Champaign, Illinois, on May 1, 1909." (Signed); "William Jones, John Smith, Isaac Watts, James Jackson." (Indorsed on back as follows:) "I hereby assign to Jacob Bauer all my interest in the above instrument. Abner Lewis."

Jackson died January 10, 1909. Jones on Feb-

ruary 1, 1909, moved to Michigan. Action by "Jacob Bauer against John Smith and Isaac Watts."

Is there anything wrong with the parties plaintiff and defendant?

Could any action be maintained against all but Jackson, or against the administrator of Jackson?

5. Smith, Peters and Jones ran a milk depot in Urbana and delivered milk to Prof. Welch every morning. Smith sold his interest to Reardon and then the concern was incorporated as the "Pure Milk Company," each man taking one-third of the capital stock. The company continued to furnish milk to Welch who did not know of these facts. When a bill of \$11 had been run up, Reardon presented a statement of account in behalf of the company, but Welch refused to pay it.

Can the company collect it in any form of action?

6. Parsons agreed with Adams to exchange a buggy and set of harness for a slot machine (which returned on the lucky numbers ten times what was dropped into it) and a cigar show-case.

(a). What would be the rights of Adams if he did as he agreed but Parsons refused to deliver.

(b.) What would be the rights of Adams if he delivered the cigar case and got the buggy only?

(c) What would be the rights of Parsons if he had delivered but Adams refused to perform?

7. Jacob Wilson was disbarred from practice September 10, 1908. He had been conducting certain litigation in behalf of James Halliday under an agreement whereby he was to conduct the latter's case for \$500. The litigation had proceeded as far as through the Appellate Court when W. was disbarred. He actually wrote the brief on appeal to the Supreme Court, but another attorney made the oral argument. The judgment was reversed without remanding.

Can Wilson recover anything?

Has Halliday any cause of action against Wilson?

8. Contract by X to furnish Y with 12,000 wagon wheels in installments of 1,000 each month during the year 1909. Y refused to accept any wheels in January and refused to state whether he would accept a shipment in February or not. April 1, X sued Y, who set up that X had brought suit too early and that X had made no tender of wheels during February or March. Y set up a counter-claim for damages for breach of contract by X.

Can either action be maintained? Is either ground of defense set up by Y valid?

9. Contract to convey lot 3 on May 1, 1909. Notes given for payment of purchase price, one due April 1, 1909; another due September 1, 1909; the third due January 1, 1910. Action to compel conveyance brought May 9, 1909. Defense that first note is not yet paid. Demurrer.

What is the proper ruling?

10. Verbal contract to build a house, contractor to be paid \$5,500 on the actual completion of the house, and \$500 further upon his presenting a certificate of full and proper completion from the supervising architect. House completed June 1, 1902. The \$5,500 was duly paid. The architect unreasonably delayed giving a certificate until October 1, 1902, although X was entitled to it on the prior June 1. No action brought by X until September 1, 1907.

Can he sustain the action upon this set of facts?

Examination in Damages.

(June, 1909.)

TERENCE B. COSGROVE.

1. B sues the Big Four Railway Company for personal injuries received through the negligence of the railway officials. The facts do not justify the awarding of exemplary damages, but show a substantial injury to the plaintiff and a liability on the part of the defendant company. The jury return a verdict for plaintiff and assess his damages at \$7.00. Motion by the plaintiff for a new trial on the grounds of inadequacy of damages.

Should a new trial be granted?

2. The plaintiff negligently leaves his team standing upon a public street without being tied and thereby violates a municipal ordinance. A boy throws a stone and strikes one of the horses causing the team to run away and injure the plaintiff. The defendant urges that leaving the team untied is not the proximate cause of the injury. It is conceded that if the boy had not thrown the stone the team would not have run away.

How would this point be decided in Illinois today in view of the recent decision of *Miller vs. The Kelly Coal Co*?

3. Through the negligence of defendant's agents the plaintiff's eye is injured so badly that the sight is destroyed. No grounds for exemplary damages appear. The jury returns a verdict for \$10,000.00. Motion for new trial on the ground of excessive damages.

Discuss this point fully.

4. The plaintiff is ejected from a train of the defendant company under aggravating and humiliating circumstances. The eviction is due entirely to an error on the part of the defendant's agent. Being evicted some distance from the nearest city, he would have been compelled to walk this distance had he not been able to secure a ride on a handcar. He sustained no damages by reason of the delay, and his money loss is merely the price of his ticket. A jury returns a verdict for \$800.00.

Should this verdict be set aside, and if so, upon what ground?

5. A citizen of Urbana sues the Big Four Railway Company, a foreign corporation, in the Federal Court at Danville for \$5,000 as damages for an injury received and due entirely to the negligence of the defendant's conductor. It appears that the conductor acted wantonly and malicious-

ly. The plaintiff asks the Court to charge the jury that "If the evidence shows that the acts of the conductor were wanton and malicious, the jury may assess exemplary damages against the defendant."

You are Federal Judge, should you so instruct?

Suppose the same case were being tried in the State Court of Illinois, would the same rule apply?

6. In a tort action the defendant offers, in mitigation, to prove that the plaintiff by his own voluntary act, since the date of the injury, has aggravated the injury and as a consequence rendered the injury of a graver character than it was originally. The plaintiff objects to this evidence.

Should it be admitted on the mere showing that the acts were done voluntarily by the plaintiff?

7. A railroad company negligently destroys the fence separating its right of way from the plaintiff's pasture land. The cattle of the plaintiff get onto the track and one of them is killed. The plaintiff calls the attention of the railroad company to the condition of the fence. The company refuse to repair it. The plaintiff leaves the fence in the same condition and other cattle escape through the opening and are killed on the railroad track.

In an action against the company what is the extent of their liability?

8. A agrees with B to act at his theatre and conform to its rules, B to pay \$25.00 for every performance. The agreement contains a clause that if either party fails to fulfill his contract, or any part thereof, he shall pay the sum of \$250.00 as liquidated damages, and not as a penalty. There is a breach by B, the owner of the theatre.

What are A's rights under this contract?

9. Physicians called to attend a sick child telegraph to another physician to bring instruments immediately to "John Reid's." The message also explains the nature of the attack. Owing to negligent delay in delivery, the child dies. The child's father brings an action against the telegraph company, and the question is whether he can recover for mental suffering.

10. The defendant takes ice in a stream over the land of another, to which the owner of the land has the exclusive right. The measure of damages is the only question in dispute. The value of the ice on the market is 30 cents per hundred pounds; the cost of hauling 5 cents per hundred pounds; while the cost of scraping, plowing and cutting is 15 cents per hundred pounds. No facts in evidence justifying exemplary damages.

What is the plaintiff's damage per hundred pounds?

Examination in Domestic Relations.

(June, 1909.)

PROFESSOR GREEN.

(Answer ten questions only. In every answer state your reasons concisely.)

1. Richard and Sally in jest went through a marriage ceremony before a justice qualified to perform a marriage. They were afterward told by the justice that the ceremony made them man and wife, and believing him they lived together for three years as man and wife and had a son. Would they be man and wife (a) at common law; (b) in Illinois today?

2. State briefly the common law as to the marriage of infants. How does the present law of Illinois differ from the common law?

3. A statute forbade a person divorced to marry again within a year and declared void all marriages made in violation of the statute. A, a resident of the State, whose wife had just secured a divorce from him, went with B, also a resident

of the State, to Europe in order to escape the statute, and were there married. They immediately came home again and lived as man and wife for three months, when A died.

Is B entitled to dower in A's farm on which they lived?

4. X mysteriously disappeared and was unheard of for ten years. At the end of that time, his wife, Y, believing him dead, married Z, by whom she had a son. X returned. It appeared he had wandered from home because of insanity and had just recovered his reason. A statute provided that desertion and adultery should be causes for divorce.

Is X entitled to a divorce?

5. State the facts and the point decided in some case on condonation, recrimination or alimony contained in the list given out for study.

6. Max's wife, Mary, having died, he gave his baby son to Mary's sister, Jane, and in consideration of \$100, paid by Jane, signed an instrument in the following words: "Max hereby relinquishes forever all rights to his baby, and Jane hereby, with consent of Max, adopts the baby as her own, and agrees to support and educate him." Jane also signed the instrument. When the boy was 13, Max wanted to get him back.

Was he entitled to do so?

7. Andrew was 19 years old. By representing himself to be 21, he secured an appointment as city school superintendant, and acted as such for a year, although a statute provided that no minor should be competent to hold the office. In behalf of the city, he hired Bert who was 20, to serve as teacher in a city school at a reasonable salary. Also at the request and in behalf of his friend Charles, an adult, he hired Dan to tutor Charles's son at college, at a very large salary. Afterwards, discovering that Andrew was a minor when he made the contracts, the city and Charles repudiated them, and would not permit Bert and Dan to do any teaching. Andrew, when he became 21, affirmed the contract with Bert and disaffirmed the contract with Dan. Bert then sued the city, and Dan sued Charles, for breach of contract.

Is there a good defence to the suits, or either of them, and, if so, what?

8. George, aged 19, was sent by his father, who lived in Chicago, to attend the University of Illinois. His father gave him \$500 for his expenses. George spent \$4.00 a week for board, a reasonable sum, paid \$20.00 a month for a room whose value was \$8.00 a month, and bought a gun for \$100, and a motor cycle for \$175. George's father died suddenly, insolvent, and George, needing money, tries to get back all he has spent, tendering back the gun, which is in good condi-

tion, and the cycle, which has been so damaged in a collision, without his fault, as to be worth only \$50.

What, if anything, is he entitled to recover?

9. Is the infant liable in the following cases in an action of tort?

(a) A girl of 4, knowing no better, entered plaintiff's garden and picked his flowers.

(b) A youth of 20 sold a horse which he knew to be unsound with a fraudulent warranty of soundness.

(c) A tailor hired a boy of 10 to press clothes for the tailor's customers with an electric pressing iron. The boy allowed the iron to become too hot and thereby injured the customer's clothes and his employer's pressing board. An ordinary boy of his age would not have known enough to avoid the damage, but this boy in view of his knowledge of electricity and his experience with the iron should have known how to use it, and the damage was caused by his failure to use the care reasonably to be expected from one of his intelligence and experience.

10. A, his wife, and his son, of 14, were so severely injured in a railway accident caused by the negligence of the railway company that they were confined to a hospital for months.

What suits may be brought to recover damages and who should be parties to each?

11. A man gave his wife money to buy a hat which she needed. She lost the money playing bridge, and bought the hat at a shop where she had never traded before and was not known, saying her husband would pay for it.

Is the husband liable?

A married woman without cause deserted her husband and, being in want, bought necessities at a shop where she was not known and had never traded before, saying her husband would pay for them.

Is he liable?

12. A woman agreed with her husband, for \$20 paid her, to keep his buttons sewed on for a year. She refused to perform.

Can he maintain an action against her on the agreement (a) at common law? (b) in Illinois today?

A woman living apart from her husband circulated defamatory stories about him of such nature that if circulated by anyone else he could have sued the slanderer.

Can he maintain an action of slander against her (a) at common law? (b) in Illinois today?

Examination in Equity.

(June, 1909.)

PROFESSOR GILBERT.

1. Action by a tenant for life, against a prior tenant for years, to enjoin the cutting of trees which the defendant was clearing off to build barns and a half-mile exercise track for horses. Complainant also prays for an accounting for his benefit for timber blown down in a recent storm but which the defendant had made use of. There is no covenant with reference to non-impeachability for waste.

Should equity grant either prayer?

2. X, the owner of a coal-mine, had leased it to A, B, C and D, partners, for a term of 20 years, 15 of which had elapsed. He made a verbal agreement with the lessees that if the firm would dissolve, A and B withdrawing, C and D continuing and assuming all existing liability, he would give to C and D a new lease at a diminished rent for 10 years. The acts were done as suggested by

X, but he refused to give the new lease. Bill by C and D for specific performance.

Will it be granted?

3. Agreement by X on purchasing a public garden and grounds, to serve thereon Y's beer and mineral waters and no others. X begins to serve Z's beer, whereupon Y brings an action to enjoin future sales thereof and asking for an accounting as to all profits made on the sale of Z's beer.

Should his petition be granted?

4. The owner of the yacht, "Sara," contracted to sell her to M, but later sold and delivered her to X, who knew of the prior bargain. Action against the owner and X by M's assignee to compel a specific performance. Demurrer.

What is the proper ruling?

5. Wallace contracted to sell to Winter his farm. Winter supposed Wallace unmarried. A woman shortly afterward appeared and claimed to be Wallace's wife. She refused to join in any deed with Wallace. The latter strenuously denied acquaintance with the woman and claimed that he had never seen her before. Winter refused to take the land and Wallace files his bill for a specific performance, which Winter resists.

What will equity do in the case?

6. In July, 1857, the tenant signed an agreement with the lessor to take a new lease for 31 years at the same rent and to pay on August 1, \$3,000 additional as a bonus. A draft of a lease was sent to the tenant for his approval but he never executed or returned it. He continued to remain in possession and pay rent. No other steps were taken for 14 years, when the heir-at-law of the lessor (the latter having recently died) filed a bill for the execution of the agreement and for the payment of the \$3,000.

Should any relief be possible against the tenant, and is the suit brought in the proper name?

7. Grant to the X Railroad Co., of a right of way across the plaintiff's farm, the company agreeing that it "will at no time run passenger trains between Thomasville and Georgetown by any other route than upon the right of way so granted, in case the track is ever laid thereon," and "in the event of running trains by any other route, said right of way shall at once cease and determine at the option of the grantor herein." The X company later transferred all of its properties of every kind to the Y company, which soon laid out a shorter route between T. and G. several miles distant. The plaintiff seeks an injunction to prevent the company from running its passenger trains over the new track.

What are the plaintiff's rights in equity?

8. Mrs. Edmunds gave \$600 to Collins to invest in a mortgage. He, however, with the money, bought in his own name lots 3, 6 and 9, and executed his note to Mrs. E., securing it by a mortgage on these lots. He later got possession of this mortgage and cancelled it, borrowed of others, giving mortgages, and conveyed to his sister without consideration. Mrs. E. consulted Jackson, an attorney, who agreed to file a bill to assert Mrs. E's title. After the bill was filed, Mrs. E. agreed that J. might have half of all the proceeds of that suit as pay. Title was afterward declared to be in Mrs. E., who deeded one-half of the land to J. The lots were worth \$2,540. J.'s services were worth about \$350. Bill by Mrs. E. to set aside the deed to J.

Is there any equity in the bill? (143 Ill. 513.)

9. Contract on January 7, to be completed by a conveyance and the payment of the purchase money on February 9. The vendor was to convey by "a warranty deed in fee, free from all incumbrances." By mutual assent, the time for performance was postponed several times, first till February 16, for the accommodation of the plaintiff, and afterward for the accommodation of the defendant until May 4. On March 3, two assessments for local improvements were made against the lots which, under the law, instantly became liens, though the improvements were not to be made until the following year. On March 15, a judgment was rendered against the vendor for \$1,500 on a debt due

Z. Bill now filed by vendee demanding specific performance by the delivery of a deed warranting the property "free from incumbrances" of all kinds, and in particular from the liens and judgment mentioned.

What will equity do with the bill? (138 N. Y. 345.)

10. Option given for \$50 by Lamb to J. B. Ferris, March 1, 1906, and recorded, to purchase Lots 9 and 25. "Provided the said Ferris will pay \$550 to Lamb on or before May 20 next, the said Lamb will convey said lots by a warranty deed to whomsoever Ferris shall direct." May 21, Ferris tendered \$550 to Lamb, who refused to accept the same, and who later in the day conveyed to Streeter for \$700. May 23, Ferris files his bill for a specific performance.

What ruling?

Examination in Equity Pleading.

(June, 1909.)

TERENCE B. COSGROVE.

1. Give the nine regular successive steps in a suit in equity.

2. Name the nine parts of a bill in equity.

3. Name nine original bills praying for relief.

4. What is the probative force of an answer under oath?

(b) How much of an answer under oath is evidence against the complainant?

(c) In what part of the bill is an answer under oath waived?

5. A files a bill to redeem. The respondent pleads to a part of the bill and answers to the rest. The plea is overruled.

What is then the proper procedure?

(b) What would have been the effect if the plea had been sustained?

6. A bill to foreclose a mortgage is filed, naming as parties defendant—

(1) Richard Roe—second mortgage.

(2) John Doe—holder of a life interest in the property.

(3) William Brown—tenant of the property.

(4) James Craig—who has a statutory lien on the property.

Is this bill defective for want of proper parties defendant, and if so, whom should be added?

7. Define—

(a) An anomalous plea.

(b) An answer in subsidium and state how it differs from an ordinary answer.

8. What is the distinction between scandal and impertinence?

9. Draw a creditor's bill, conformable to the Illinois practice, to set aside a fraudulent conveyance and subject the property to the satisfaction of the complainant's judgment. Use the names

and facts here given and such others as may be necessary to constitute a good bill.

Bush Hat Co., a corporation, complainant.

William Brown and Sarah Brown, his wife, respondents.

Judgment for \$500.00 by complainant against defendants, Jan. 1, 1909.

10. Draw a bill, conformable to the Illinois practice, to foreclose a mortgage, using such facts as you see fit, and attaching copies of the exhibits.

Examination in Evidence.

(June 8, 1909.)

PROFESSOR HUGHES.

(N. B.—Explain fully, giving reasons for answers.)

1. A, while running his automobile at a high rate of speed, runs into B and seriously injures him. B calls a physician to treat his wounds and explains to him an hour later the nature and location of his pains. After his recovery, B sues A for \$1,000 damages.

Are B's statements to the physician admissible in evidence?

2. A seeks to probate B's will. The evidence shows that B duly executed a later will in which he expressly revoked the former one, and also that he subsequently duly revoked the later one. A claims that in revoking the later will B's intention was to revive the former one. To rebut this, oral declarations by B, made the day after he revoked the later will, that his intention in revoking the later will was not to revive the former one, were offered in evidence against objection.

Should the objection be sustained?

3. A is on trial for rape. The mother of the prosecuting witness is allowed, against objection, to give in evidence the details of a complaint made to her by her daughter a few hours after the alleged rape, charging that the defendant had outraged her. A is convicted.

Is the Court's ruling prejudicial error?

4. A sues the city of X for \$2,000 damages for personal injuries caused to him by reason of his foot going through a rotten plank in a sidewalk of the city. The Court, against objection, allows the rotten plank to be exhibited for the inspection of the jury. A is given a verdict for \$1,000.

Is the Court's ruling prejudicial error?

5. A sues B for the rent of a house and lot. The lease states that the premises are in the city of Champaign, "and described as follows, to-wit: The house known and numbered as No. —, East Green street."

Is parol evidence admissible to identify the house?

6. A sells B a certain house and lot. By mistake the scrivener describes the premises in the deed as lot 8 in square 24, instead of lot 24 in square 8.

In a suit to reform the deed, is oral testimony admissible to show the mistake?

7. A devises to B "my house and lot No. 36, South Sixth street, in the city of Champaign and State of Illinois, now occupied by John Doe." A has never owned the house and lot described, but he owns house and lot No. 36, on South Fifth street, Champaign, now occupied by John Doe.

Is the devise to B void for uncertainty?

8. A devised a certain farm to "my niece Mary, eldest daughter of my brother Joseph." A's brother Joseph has been married twice. By his first wife he has a daughter whose name is Mary Jane; and by his second wife he has a daughter whose name is Mary Elizabeth.

Is direct evidence of intention admissible to show that A meant Mary Elizabeth?

9. A is on trial for counterfeiting. X, the officer who arrested A, is asked upon cross-examination, against objection, to state the name of the person from whom he received the information which led to A's detection and arrest.

Should X be required to answer the question?

10. A sues B for damages for libel. Three witnesses testify for the plaintiff and three for the defendant. Among others, the Court gives the jury the following instruction: "The Court instructs the jury that if you believe from the evidence that any witness in this case has sworn

falsely to any material fact in issue, then you are at liberty to disregard the whole of such witness' testimony except wherein it is corroborated by other credible evidence in the case." A recovers a verdict for \$1,000, and B makes a motion for a new trial on the ground that the Court's instruction is prejudicial error.

Should B's motion be sustained or overruled?

Examination in Future Interests in Property.

ASSOCIATE PROFESSOR NORTHRUP.

1. Testator devised to A for life, remainder to A's son, B, in fee simple, but if B died before A and A had other children at his death, then to such other children in fee, and if A did not have other children then to C in fee. Testator died leaving A and B living.

A and B suffered a recovery to X. Later B died and then A suffered a recovery to Y.

What are the respective interests of X, Y and C?

2. A devise was made "to my son, A, for his life, remainder to his children and their heirs, but if my said son, A, leaves no descendants surviving him, then to B and his heirs." A had no children living at his death but had a grandson, X.

What are the interests of A, X and B, respectively?

3. Testator, by his will, gave all his property, real and personal, "to my wife for her life." The

only other gift was a residuary gift to his children and their heirs in equal shares as tenants in common.

What was the interest of the wife and of the children in the property?

4 and 5. Testator devised a residence to his brother John for life, remainder to John's children in fee simple, but if John had no children or if they all died before attaining 21, then to testator's brother Robert; and the will provided that if John ceased to live in the house he should forfeit his estate. Five years after testator's death John ceased to live in the house, and the testator's heir and residuary devisee, X, enforced the forfeiture and took possession of the house. Later John died.

(a) If John had never had a child, who is entitled to the property?

(b) If John had forfeited his estate before his son was born but a son was born later and died under 21, who is entitled?

(c) If John had forfeited his estate before his son was born but a son was born later and attained 21, who is entitled?

(d) If John had a son before he forfeited the estate and the son attained 21, who is entitled?

(e) If John had a son before he forfeited the estate and the son died under 21, who is entitled?

6. If a gift by will reads: "To the children of X to take as tenants in common for life, and on the death of all such children without issue then living, then to Y," and one child dies without issue then living, other children of X surviving, what disposition is made of the share of the child so dying?

7. Residuary gift of real and personal property "to A and his heirs, but in the event that A should die and none of his issue be living, then I give said residue to B and his heirs." A died leaving a son, X. Later X died without ever having had issue.

Is B entitled to the property, and, if so, define his interest.

8. Testator left a fund to trustees to pay the income to the children of his brother, A, "equally among them all" and after the death of the survivor to divide said fund among their children in equal shares.

Give arguments for and against the validity of the gift to the grandchildren and your decision.

9. Devise to A for life, remainder to his children for their lives in equal shares as tenants in common, remainder on the death of the survivor to A's grandchildren in fee in equal shares as tenants in common.

State what estates are created by the will and whether they are too remote.

10. Devise to A for life, remainder in fee simple to such children of A as, before or after his death, attain 25 years of age, but if A dies without children surviving him or if his children all die under 25, then to the nearest blood relative of the testator as may then be living. A was living at the time of the testator's death and later died unmarried. X was then the testator's nearest relative.

Is X entitled to the property?

Examination in Insurance.

(June, 1909.)

PROFESSOR GREEN.

(Give concise reasons for every answer.)

1. A took out a policy of insurance against fire on a stock of glassware in his store. By his negligence the store caught fire. A became frightened, lost his self-control, and threw the glassware out of the window, breaking it. He acted in good faith, to save the goods from the fire, but was grossly negligent. If the articles had been left where they were, part of them would have been equally damaged by the fire; the rest, which were in the room next to that where the fire was, would not have been damaged.

What is the liability of the insurance company?

2. B took out a policy of life insurance payable to his wife. He was then sane, but a week later became insane and killed himself by shooting, intending to end his life, but being incapable through insanity of appreciating the moral nature

of self-killing or its consequences to himself and his family.

Is the insurance company liable?

Would it make a difference if the policy provided that there should be no liability if the insured died by his own hand within a year?

Would it make a difference if B purposed suicide when he took out the policy?

3. State the doctrines of constructive total loss and of abandonment, as applied in policies of marine insurance upon ships.

4. A cargo of wheat was insured under an ordinary policy of marine insurance from New York to Liverpool. It was valued in the policy at \$30,000 and insured for \$20,000. It was damaged by sea peril on the voyage. In its damaged condition it was worth \$40,000 in the market at Liverpool. If sound, it would have been worth \$50,000 there. Its value at New York on sailing was \$35,000. During the voyage the price at New York of the wheat, sound, had risen to \$45,000.

How much may the insured recover from his underwriter?

5. An agent to solicit and transmit applications for insurance, known to have no authority to contract, solicited C to insure his house against fire. The house to the agent's knowledge was of

wood. The agent by mistake showed C a policy which, although neither noticed it, contained this clause: "This form of policy is intended for brick buildings only, and unless the building is brick no contract of insurance is made and the policy is a nullity for all purposes." X filled out the policy, not mentioning in it the material of his house, and delivered the premium to the agent who sent it with the policy to the home office for acceptance. The home office executed the policy, supposing the house to be brick, retained the premium and returned the policy to C, who put it in his safety vault. The house burned within the term. C then first noticed the clause above quoted.

Has he a valid claim under the policy?

Would it make a difference if both C and the home office had known at all times that the house was wood?

6. A at the request of X, his wife, insured his life for \$5,000 "payable to X." Subsequently he obtained a divorce from X, married Y, surrendered the policy to the company and received in exchange a new paid-up policy payable to Y. The next day X died and a day later A died. Administrators were appointed to the estates of X and A.

What are the rights of the persons concerned in relation to the policies and their proceeds?

7. A was a cripple, unable to earn money. His sole property was a stock of goods worth \$2,000. He owed X, Y and Z \$1,500 each. X, who had a mortgage on the goods to secure his debt, insured them against fire in the sum of \$2,000. Y also insured them for \$2,000. Then A insured them for \$1,000. Then A died, and Z thereafter insured the goods for \$2,000. All the policies were in the same company. The goods burned up.

What rights against the company have X, Y, Z and the administrator of A?

8. M, having insured his life for \$5,000 payable to his estate, thereafter committed murder for which he was executed.

Is the insurer liable?

How would you answer if he committed the murder before he took out the policy?

9. A life policy provided that its validity should not be contested after one year by reason of any fact existing before or at the time it was issued. It purported to insure a creditor in the sum of \$2,000 on his debtor's life, the amount of the debt being stated to be \$1,600. It was secured without the consent of the alleged debtor, and by a fraudulent misrepresentation as to his health. In reality, no debt existed, but the person who took out the policy was brother of the person

whose life was insured. Death occurred two years later.

Is the policy enforceable?

Would it make a difference if the insurance company knew the truth when it issued the policy?

10. A policy provided that it should be void in case of fraudulent misdescription of the thing insured. It designated the thing insured as "furniture contained in a wooden building with shingled roof at 126 Chestnut street, occupied as a dwelling." The roof was of slate and the correct number was 1126. The misstatements were unintentionally made by the insured. Six months later the house was left vacant. Thereafter and within the term of the policy it was burned.

Is the insurer liable?

Examination in Municipal Corporations,

(June, 1909.)

TERENCE B. COSGROVE.

1. The county of Clay having an indebtedness of \$150,000.00 is divided by the Legislature into three counties, the two new counties being called Marion and Lake, and the statute providing that each of the new counties shall assume and pay one-third of the indebtedness of Clay county. One year afterward a subsequent statute was passed relieving Marion county of its share of the debt.

Is this act valid, and if so, which of the two counties, Clay or Lake, will be bound for the share of Marion, or would it be equally divided between them?

2. A statute requires cities of certain population to provide suitable parks and free baths for its inhabitants. The city of C purchases a piece of land and converts the same at considerable expense into a public park and erects therein suitable public baths. A private corporation having

been organized for furnishing amusement and bathing facilities to the citizens of cities, the Legislature by statute directs the city of C to transfer its park to this private corporation. This the city refuses to do.

On a hearing had for that purpose what should be the decision as to the validity of this last mentioned statute?

3. The relator has recovered a judgment against the city for \$5,000 and an execution has been returned nulla bona. A State statute provides that when the city is in debt the city assessor may, if he deems it advisable, levy a special tax to satisfy such indebtedness. He refuses to levy a tax to satisfy this judgment and the relator files his petition for a mandamus to compel the assessor to levy a tax. There are two defenses: 1st. The judgment should be satisfied out of the property of the inhabitants of the city. And 2nd. The levy is discretionary with the assessor.

Discuss these defenses.

4. The relator, a physician, entered into a contract with the respondent, the city of D, to care for and furnish medical aid to such of its inhabitants as might become infected with any contagious disease at a stipulated price for each patient treated. At the time of the contract the power of the city to levy taxes for current expenses was limited to 2 per cent. of the taxable valuation of the prop-

erty within the city. A year later the limit was reduced to 1 per cent. The relator, having completed the contract at the end of the second year, and not having been paid, ask for a mandamus to compel the levy of a tax to satisfy his claim which has been reduced to a judgment at law. The defense is that the statutory limit of 1 per cent. has been reached; the relator demurs to this plea on the ground that as to his contract with the city the later statute is void.

What is the ruling of the Court?

5. The plumbing at a city school house is allowed to remain out of order for such a length of time that a pupil is taken sick as a direct consequence thereof, and filth, etc., is deposited upon the property of an adjoining owner. The child by its next friend and the adjoining owner each sues the city.

Should there be a recovery in either case?

6. The city of X acting under legislative power raises the grade of one of its business streets six feet. Care is taken that no other damage is done to abutting property owners than the necessarily resulting difficulties of ingress and egress and a consequent depreciation in the rental value of the premises.

Can the city be made to respond in damages for such injury according to the holdings in Illinois?

7. The city of Urbana is about to enter into a contract with the Urbana Water and Light Company by which the city agrees to pay \$5,000 a year for the next ten years in consideration that the company furnish light and water to the citizens of Urbana. At the time the city had already reached the limit of indebtedness allowed by statute. The complainant, a tax payer of Urbana, seeks to have the city enjoined from entering into the contract.

What should be the ruling according to the Illinois law?

8. A clause in the constitution of Illinois declares that no county, city, etc., shall be allowed to become indebted in any manner, or for any purpose, beyond a certain amount. The county of LaSalle, having contracted an indebtedness equal to the constitutional limit, entered into a contract with the plaintiff by which the plaintiff agrees to furnish court room fixtures to be used at the next term of the Circuit Court, the old furniture having been destroyed by fire. Such furniture is delivered to the county and a county warrant issued in favor of the plaintiff.

The present action is upon this warrant; you are corporation counsel, have you any defense?

9. The State constitution provides that no special election shall be held without first giving notice thereof. A statute was passed authorizing a city to subscribe stock in a contemplated rail

road if, at an election held for that purpose, it should appear to the city clerk that at least three-fourths of the voters voted in the affirmative. The clerk certified that three-fourths of the votes were cast in the affirmative and the bonds were issued accordingly, recitals being inserted in the bonds given in payment of the stock to the effect that the bonds were issued according to law and that at least three-fourths of the voters voted in the affirmative. The bonds also contained a reference to the statute authorizing their issue. As a matter of fact the election returns show that not more than one-half of the votes cast were in the affirmative. No notice was given.

In an action upon the bonds has the city any defense?

10. The street and alley committee having no such authority, engage a contractor to pave a certain street. After the work is completed the city assessor apportions the benefits, and the abutting property owners pay to the city treasurer their proportionate assessment. The contractor sues the city for the work of paving. The defense of the city is that the work was not authorized and the contractor is bound to know that the committee had no power to enter into such a contract.

If you were trial judge, along what lines would you instruct the jury on the question of municipal liability?

Examination in Partnership.

(June 11, 1909.)

PROFESSOR HUGHES.

(N. B.—Explain fully, giving reasons for answers.)

1. Briefly discuss the correctness of the following propositions:

(1) Where carriers over different routes have associated themselves under a contract for a division of the profits of the carriage in certain proportions, or of the receipts from it after deducting any of the expenses of the business, they become jointly liable as partners to third persons.

(2) Where carriers over different routes agree that each shall bear the expenses of its own route and of the transportation upon it, and that the gross receipts shall be divided in proportion to distance or otherwise, they are not partners inter se nor as to other persons.

2. A, the owner of a farm, and B enter into the following agreement: A agrees to furnish the use of his farm, the stock on the farm and one-

half of the seed grain. B agrees to furnish all necessary labor to run the farm. The profits are to be equally divided between them.

- (a) Are A and B partners?
- (b) Are they liable to third persons as partners?

3. A and B buy a horse, each paying one-half the cost, under an agreement that when either of them has possession of it he is to provide for its keep without cost to the other party, and that each party is to endeavor to procure a purchaser at a profit over the cost, but that neither is to sell the horse without the concurrence of the other.

Are A and B partners?

4. A and B are partners in the grocery business. C is one of their creditors. A sells his interest in the business to X. B and X carry on the business for three months, at the end of which time B sells his interest to Y. D is a creditor of B and X. X and Y carry on the business for two months, at the end of which time a commission in bankruptcy issues against them. E is a creditor of X and Y. The assets include some of the goods in stock when A sells his interest in the business to X.

In marshalling the assets, what are the rights of C, D and E, respectively?

5. A and B are partners. The firm assets, including a promissory note against A for \$200, are \$1,000; and its liabilities, including a promissory note to B for \$300, are \$2,000. A's separate assets, including a promissory note against B for \$100, are \$400; and his individual liabilities are \$800. B's separate assets, including the promissory note against the firm for \$300, are \$1,200; and his individual liabilities, including the note to A for \$100, are \$2,000. Commissions in bankruptcy issue against the firm and also against each partner.

(1) How much should the firm creditors receive?

(2) How much should A's individual creditors receive?

(3) How much should B's individual creditors receive?

6. A, who is the ostensible proprietor of a drug store, has a dormant partner, B. X, who sold A a buggy on credit, obtains a judgment against him, and, without knowledge that B is his partner, levies upon their stock of drugs. A week later Y, who sold A part of the stock of drugs on credit, and who has learned since then that B is his partner, obtains a judgment against them and also levies upon their stock of drugs.

Which levy should be given priority?

7. A and B are partners. The firm assets are \$8,000 and the liabilities \$9,000. B, whose in-

dividual liabilities are \$4,000, purchases, in good faith, A's interest in the firm business, agreeing to pay the firm debts. Three months later B goes into bankruptcy. The firm debts and B's individual debts at the time of purchasing A's interest in the firm business are still unpaid. B's assets, which include goods formerly belonging to the firm, and worth \$5,000, are \$10,000; and his total liabilities \$15,000.

How should B's assets be disbursed?

8. A and B are partners. C sells to the firm some goods on credit, receiving as conditional payment a firm note indorsed by A, who also pledges to C, as security for the debt, individual property. Subsequently the firm goes into bankruptcy.

Must C relinquish his security in order that he may share in the dividends from the firm assets?

9. (1) A, who is B's partner in the hardware business, leases to him a dwelling house. Subsequently B goes into bankruptcy.

Is A entitled to share in the dividends from B's separate estate for the rent due?

(2) C, who is D's partner in the grocery business, leases from the firm a dwelling house. Subsequently C goes into bankruptcy.

Is the firm entitled to share in the dividends from C's separate estate for the rent due?

10. A and B are partners. A loans \$1,000 to the firm. Subsequently commissions in bankruptcy issue against the firm and also against each partner. A's separate creditors petition to be allowed to share *pari passu* with the firm creditors and receive dividends out of the firm assets on \$1,000, on the ground that A's separate estate is diminished, and the firm estate increased, to that extent by A's loan to the firm.

Should the petition be allowed?

Examination in Private Corporations.

(June, 1909.)

TERENCE B. COSGROVE.

1. In 1901 W. A. Maher became a stockholder in the Chicago & Peoria Railway Co. organized under the laws of Illinois for the purpose of running an interurban line from Chicago to Peoria. In the State constitution there is a reservation of power to alter, repeal or amend the charter of any corporation organized in this State. The State Legislature passed an act July 1, 1903, altering the charter of this company authorizing it to engage in the additional enterprise of manufacturing artificial ice for sale in the city of Chicago, and directing that such alteration shall become effectual only upon a ratification by vote of at least three-fourths of the stockholders of the company. More than this number voted in favor of the amendment. Maher voted against it and now files a bill in equity to enjoin the erection of buildings to be used in the ice business.

What should be the decree of the chancellor upon this showing?

2. The State reserves the power in its Legislature to alter, repeal or amend the charter of a corporation organized in that State. A company is incorporated therein for the purpose of building a plank road from A to B, within the State, and by charter given the power to collect tolls on such road. The city of B increases in size and the toll gate is within the city limits. The Legislature under its reserved power passes an act requiring the company to remove its toll gate at B to a point without the city limits and one mile further back on the plank road. The corporation refuses to remove the gate, and the city files a petition for a mandamus to compel its removal, setting up the statute. The company demurres to the petition claiming the statute is unconstitutional.

What should be the ruling on the demurrer?

3. The constitution has reserved in the Legislature the power to alter and amend but has not reserved the power to repeal the charter of a domestic corporation. A statute is passed amending the charter of a certain corporation in a certain particular, yet in no way impairing vested rights or changing the objects of incorporation. The corporation refuses to accept the amendment or comply with its terms.

What remedy has the State, remembering that the power to repeal has not been reserved?

4. The U. S. Steel Company are heavy creditors of the C. & P. Railroad Company for steel and

equipment furnished. Their claim has not been reduced to a judgment nor in any way secured. The steel company files a creditor's bill alleging the insolvency of the railroad company; its determination to sell its equipment and rolling stock; the entering into by the railroad company of a contract wholly ultra viers the corporation; the consequent depreciation of the value of its properties; and that its contemplated action may render the complainant's claim uncollectable. The bill asks for an injunction and the appointment of a receiver. A demurrer is filed by the defendant corporation.

What should be the ruling on the demurrer.

5. An individual having vast mining interests decides to form a corporation to take over and operate the properties. Accordingly a company is organized consisting of the owner, his son, and his attorney. The attorney is given \$5,000.00 worth of stock as a gratuity and to enable the owner to comply with the statute requiring at least three stockholders. The stock is all issued as fully paid up.

A miner injured in the mine through the negligence of the corporation officials, sues the corporation and recovers judgment for \$2,500.00. The judgment is affirmed in the Appellate and Supreme Courts. Pending the appeal the corporation is dissolved and its assets are used in paying corporate indebtedness.

What do you say as to the possibility of compelling the attorney, who took the stock gratuitously with full knowledge of the fact, to satisfy this judgment for \$2,500.00?

6. The Illinois Realty Co., an Illinois corporation, is organized for the purpose of dealing in real estate. J. Brown enters into a contract with the company by which it is agreed that Brown is to purchase certain property adjoining the city of Champaign, the money being furnished by the realty company, and to transfer the title to the land to the company. The property is to be laid off in city lots and the profits equally divided: the company having full charge of the sale of lots. The profits are not divided and Brown sues upon the contract. The defense is: no power in the corporation to enter into a partnership agreement.

Is this defense good, this action being on the contract?

7. Defendant, a stockholder, surrendered to the corporation \$55,000.00 worth of stock of the corporation and received in payment land valued at that amount. The stock was cancelled. Plaintiff at the time had a claim against the corporation for fraud and misrepresentation and afterward recovered a judgment for \$5,500.00. If plaintiff's claim were counted as a debt of the corporation at the time of the transaction with the defendant, the corporation was left insolvent by that transaction.

Plaintiff's execution on the judgment having been returned unsatisfied, he files this bill to subject defendant's land to the payment of his judgment debt.

Is he entitled to a decree.

8. Plaintiff is the owner of stock in a hotel company and brings an action in case against the directors. The declaration alleges that the directors disregarded their duty, failed to exercise reasonable vigilance in the custody of the property of the company, negligently permitted the president to manage the whole business, who loaned moneys to himself and to others upon insufficient securities, and made loans to exceed that allowed by the by-laws, whereby the capital was lost and the plaintiff's stock rendered valueless. Defendant demurs to the declaration.

What is the correct ruling?

9. Under the general laws of the State of Illinois a corporation is validly organized for banking purposes. The National Banking Act provides that no bank shall have the powers to transact any business until it has been authorized by the Comptroller of Currency to commence the business of banking. No such certificate of authorization was issued. The directors entered into a lease on behalf of the bank for a certain office building. The corporation takes possession and remains in possession a short time. The bank

ceases to do business, the building is vacated and the lease renounced.

Can the lessor hold the corporation for any of the rent; if so, how much, and upon what theory?

Can he hold the directors who rented the building for any part of the rent; if so, how much, and upon what theory?

10. The Peoria Brewing Company, an Illinois corporation, appoints an agent for the express and only purpose of taking charge of their advertising department. In excess of this power, he enters into a contract on behalf of the corporation to erect buildings for three summer gardens in the city of Chicago to provide suitable places to sell the company's liquors. He also takes a deed to the land where the buildings are located and enters into a written contract on behalf of the corporation to assume and pay an outstanding incumbrance on this property. The corporation subsequently ratifies both agreements. Actions at law are afterward brought on both contracts.

You are counsel for the company; what is your defense?

Examination in First Year Real Property.

(June, 1909.)

ASSOCIATE PROFESSOR NORTHRUP.

1. (a) What were the principal provisions of the statute of quia emptores?

(b) Distinguish between knight's service, socage and gavelkind tenures.

2. What estate at common law does A have in each of the following cases?

(a) To A and his assigns forever.

(b) To A and the heirs male of his body by his wife, B.

(c) X, being tenant by curtesy, deeds to A and his heirs.

(d) Name three kinds of ownership by two or more persons in the same land at the same time, and distinguish between them.

3. (a) A conveys to B for ten years, remainder to C for life, remainder to C's oldest son and

the heirs male of his body. C had no son when the conveyance was made, but one was born five years later.

What interest has each person, both before and after C's son was born?

(b) Explain the meaning of the following:

Grant;

Attornment;

Release;

Surrender.

(c) On May 1st A made a feoffment of land owned by him to "B and his heirs to have and to hold from the first day of June next."

What was the effect of the conveyance?

4. Name and explain the mode of operation of and the differences between three kinds of deeds operating under the statute of uses.

5. Is the following a good deed in England and the United States?:

"Richard Roe, having agreed to pay me \$1 therefor, I hereby sell him my lot on the corner of X and Y streets in the city of Z; he to have the title when I am dead. JOHN DOE."

6. A entered into a written contract with B to sell and convey to B a certain lot upon payment of an agreed price in installments, B to have pos-

session at once and A to have the right to retake possession if default was made in the payment of any installment. B entered and built a small, four-room, wooden house, resting on but not fastened to six brick posts or piers, which were sunk two feet in the ground and extended one foot above the ground. B made default in payment. A took possession. B demanded to be allowed to remove the house. A refused.

Has B a right of action?

7. A was the owner of a factory. He mortgaged it to B for \$10,000. Later A bought from C boilers that were put in the factory. The boilers were placed on brick foundations, the latter being built in the ground and the brick work of the foundations was carried up and over the boilers so as to encase them. At one end of the boilers was the furnace. The boilers were bought under an agreement that they should remain the property of C until paid for and if default was made in payment, C should have the right to retake them and sell them, crediting A with whatever they brought. The price of the boilers was \$2,000. The agreement was not recorded or filed. Later A made a second mortgage of his factory to D, who had no notice of the agreement as to the boilers, for \$1,000. Some time later the real property mortgages were foreclosed. The land sold for \$9,000. As the boilers had not been paid for C asked that they be sold separately, which was done, and the amount realized was \$1,800.

How should the money be distributed?
Explain the theory of your answer.

8. A was the owner of a brick house. It was destroyed by fire. A gathered the bricks and laid them in piles on the same lot, preparatory to using them in rebuilding the house, which A intended to do as soon as he obtained the necessary money. The bricks remained on the land in piles for six years, at the end of which time A died. He left a will disposing of his personal property and made B his executor. C was A's heir and inherited the lot on which the house had stood. B sold the bricks to X, who removed them. C brought trover against X.

What result?

9. A leased from B by written lease for two years a lot and erected thereon a building to be used as a shop. It was a frame building and was set upon posts extending into the ground. The wooden fence enclosing the lot was fastened to the corners of the building. At the expiration of the lease A asked B if A might remain on the premises as tenant at will of B until B wanted the premises. B said A might so remain. Ten months later B notified A to vacate at once. A did so but two days later prepared to remove the building. B refused to allow its removal.

(a) What action ought A to bring to test his right to remove the building?

(b) What should be the result of the action?

10. The owner of a lot having on it a house and barn demised the premises for five years. The lease contained no covenants in regard to the care of the premises. During the term of the lease the house was accidentally burned without fault of the lessee. After the house was burned the lessee paid no further attention to the premises. The roof of the barn became leaky and rain came through. This continued until the termination of the lease. When the landlord took possession he found the roof timbers and the upper floor of the barn rotted by the water leaking through. The tenant had refused to pay any rent after the house burned.

What are the landlord's rights against the tenant?

Examination in Sales.

(June, 1909.)

PROFESSOR CLARK.

1. A wrote to B: "I have a stack of timothy hay containing about ten tons which I will sell to you at ten dollars a ton; when you get ready to take it away I will help you weigh it." B replied: "I accept the offer." That night the hay was accidentally destroyed.

Is B liable for the price?

2. A agreed to sell to B all the wine he should make from his vineyard in the year 1908 at twenty-five cents per quart. According to arrangement, B sent 4,000 bottles to be filled with the wine and made large advances to enable A to get the work done. A directed his servant to fill the bottles and send 3,000 of them to B and the other 1,000 to X, to whom he had sold that quantity of wine. X received and paid for the 1,000 bottles without notice of A's contract with B. B received 2,000 bottles but, before the other 1,000

could be delivered they were levied upon by Y, a creditor of A.

Discuss B's rights against X and Y.

3. A sold to B an automobile and a piano; B was unable to pay more than a small part of the purchase price of each. Since B needed the automobile at once it was agreed that he should take possession of it, A retaining title until the rest of the purchase price should be paid. A agreed to let B have six months' credit for the rest of the price of the piano. Two weeks later B became insolvent, the piano never having been removed by him. X, a creditor of B, levied upon the automobile for a debt due from B.

Discuss the rights of A.

4. A ordered B to make a buggy for him according to certain specifications and paid him in advance. B began work upon it and when it was about three-fourths done he wrote to A, saying that the buggy was finished and set apart for him. A wrote in reply: "All right; keep it for me till next Monday and I will come for it." Before Monday B became bankrupt, the buggy being still unfinished.

What are A's rights?

5. A agreed to sell to B a carload of coal to be taken from A's mine and shipped to B the next

week. B at once contracted to sell to X, who paid B full value. A shipped the coal to B, taking the bill of lading in his own name. B refused to pay cash according to contract, and A refused to allow delivery without it.

What are X's rights in trover against A?

6. A, by order of B, shipped goods to B, taking the bill of lading to B or B's order. B indorsed it and gave it to his agent, C, to get the goods from the carrier when they should arrive. C indorsed it to X, who advanced him \$1,000 upon it in good faith. C took the \$1,000 and absconded. When the goods arrived X presented the bill of lading and got possession of them from the carrier. B brings replevin against X.

Is he entitled to recover?

7. A, by order of B, shipped goods to B and sent him the bill of lading. A then learned of the insolvency of B and stopped the goods in the hands of the carrier. The next day B sold the goods and indorsed the bill of lading to X, who paid value for them. X knew that B had not paid A for the goods but he did not know that B was insolvent or that the goods had been stopped.

Is X entitled to the goods?

Examination in Suretyship.

(June, 1909.)

PROFESSOR CLARK.

1. Y had been hurt in a collision and rendered unconscious; X came into the office of A, a physician, and asked him to give Y medical attention, saying: "If Y's brother, Z, does not pay you, I will." A rendered the services asked for; Y and Z are both insolvent.

What are A's enforceable rights against X?

2. A borrowed \$3,000 of B and gave as security a mortgage on his farm which was worth \$5,000. A later sold the farm to X who paid A the value of his equity of redemption. Upon default in the payment of the mortgage debt, B was about to foreclose; X said to B: "If you will forbear to foreclose for three months I will pay you the debt at the end of that time." When he was later sued on this promise he set up the Statute of Frauds.

Is it a good defence?

Would your answer be the same if X had paid A \$5,000 instead of \$2,000?

3. C asks S to execute a negotiable note as surety co-maker with P; S says: "I will if you will get M to sign as surety also." C forges M's name and thereupon S signs, not knowing of the forgery. C indorses the note before maturity to X, a bona fide purchaser for value.

May X enforce the note against S?

If he may, what rights, if any, has S?

4. P bought a horse of C which C warranted to be sound. P gave in payment a note for \$200 executed by himself with S as surety: At the maturity of the note, C sued S; P still has the horse; S wishes to set up as a defence that the horse was unsound and worth only \$50.

May he do this?

5. S became surety for P on a bond to C. Upon default C obtained judgment against S and P, and was about to levy upon S's property. X then induced C to stay execution by joining S in a note for thirty days. X has to pay the note. X then learns that the bond given by S and P was usurious and void.

What right, if any, has X against P?

6. S and P having defaulted to C on a joint and several bond, C sued them jointly and obtained a joint judgment on June 1, 1900; on June 1, 1904, S paid the judgment. In May, 1909, he asks

you whether there is any way of recovering against P personally or of getting the advantage of the judgment lien on the land, the judgment never having been satisfied of record. (Statute of limitations on a bond, 10 years; on unwritten contract, 6 years).

How would you advise him?

7. S gave C a promissory note for \$1,500 to secure any balance which might become due from P to C. P became bankrupt owing C a balance of \$2,500. C proves for \$2,500 against P's estate, which pays 50 cents on the dollar.

What are C's rights against S?

Would your answer be the same if S had guaranteed all the balance which might become due, with a proviso that he should never have to pay more than \$1,500?

8. P borrowed \$1,200 of C and gave a note with S, X and Y as sureties. At maturity of the note both P and Y were insolvent and S and X raised the money by giving their own note to M. Later X became insolvent and S had to pay the note to M. Y is now solvent.

What are S's rights and how should he proceed to enforce them?

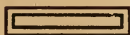
9. P owed C a grocery bill and being unable to pay, he and S executed a note for the amount

which was \$200. Some years afterward P wanted to get more goods from C on credit, whereupon S orally guaranteed the payment to C. P never paid anything to C. Just before the statute of limitations was about to expire C pressed S for payment, whereupon S paid \$50 on the note. Three years later he paid the rest of the note and also the later debt which he had guaranteed.

Discuss S's right of subrogation and indemnity against P.

[Entered February 14, 1902, at Urbana, Illinois, as second-class matter under Act of Congress of July 16, 1894.]

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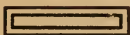
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Examination in Agency.

(January, 1910.)

PROFESSOR GREEN.

(Give concise reasons for every answer.)

1. (a) The statute of frauds provides that no action shall be brought to charge any person upon a promise to pay another's debt unless there be a memorandum of the agreement in writing signed by the person to be charged or by his agent. A contracted with B over the telephone to pay a debt owed to B by another. He asked B to reduce the contract to writing that there might be no dispute as to its terms. B did so and read it over the telephone to A, who said: "It is correct; you may sign my name to it and keep it as a memorandum." B signed A's name to the document and kept it.

Does it satisfy the statute?

(b) How would you answer if, after signing A's name, B sent the memorandum to A by mail, and A read and returned it saying: "That will be a good memorandum to bind me?"

(c) How, if the memorandum were made and signed by B in A's presence, and A, looking over B's shoulder, suggested an alteration, and when the alteration had been made, said the memorandum was correct?

2. A physician had a servant to drive him on his professional visits. One day the servant was sick, and he arranged with the proprietor of a livery stable for the services for that day of one of his employees as driver, for \$5.00 to be paid to the proprietor. The proprietor was reputed to have skilled drivers, but the man he sent did not know how to drive, and because of his lack of skill ran over X.

What person may X sue?

3. "The Board of Trustees of the University of Illinois," a corporation capable of being sued, maintained a fire engine with employees whose duty it was to drive the engine when the University fire alarm was sounded. Mistaking the whistle of a locomotive for the University fire alarm, the employees ran the engine through the campus in the direction of the supposed fire, and in so doing negligently ran over a student, a professor and a man employed as policeman about the campus. As they turned a corner they saw another student in their path, but thinking it more important to get to the fire quickly than to wait for him to get out of the way, they put on increased speed and intentionally ran over him.

Which of the persons run over may sue the corporation?

4. A owned a quick lunch counter. He employed B to manage the business, telling him to use only butterine, and not to buy real butter. B bought real butter on credit from X. He bought in A's name, intending the butter to be used at the lunch counter, but falsey told X that it was for A's use in his family. A, having discovered the facts, refused to accept the butter.

What are X's rights?

5. A was agent of the Illinois Central Railroad Company to sell tickets at M station, with the usual instructions to sell only to persons who applied at the ticket office and paid money down.

Railroad tickets are transferable, so that a person who buys a ticket from the company may sell it, and it will entitle the vendee to be carried, and tickets are frequently so sold.

A found that the company had by mistake given him a bundle of 100 tickets not charged against him, which he could therefore appropriate with little danger of detection. Accordingly he sold one to each of the next ten persons who applied at the ticket window and put the money in his pocket. That night he took ten tickets home with him and there delivered them to his brother, a ticket broker, who undertook to dispose of them to innocent purchasers and to divide with A the

money received. This was done. The same night the ticket office was robbed by another ticket broker, through A's negligence in leaving the door unlocked, and the rest of the 100 tickets were stolen. These also were sold to innocent purchasers.

What rights against the company have the various purchasers of tickets?

6. X was treasurer and general manager of A's cotton mill. It was the general practice of cotton mills to pay for purchases of cotton with money borrowed by their treasurers on promissory notes from the banks.

A, however, having plenty of working capital, instructed X not to borrow money, but to keep a sufficient balance at the bank to pay all bills as they fell due.

X bought cotton on credit. When payment fell due a financial panic came on, the bank in which the mill's money was deposited failed, and the sellers of the cotton were about to tie up the mill by attaching the cotton on hand unless paid in legal tender the amount or their claim, \$10,000.

A could not be reached. X sent a trusted clerk to a certain other bank with instructions to arrange for a loan of \$10,000, to sign A's name to a 90-day note for that amount with interest at 6 per cent, and to deliver the note to the bank in exchange for the \$10,000 in legal tender.

The clerk did as instructed. The bank knew that the clerk occupied a responsible position in

the mill, and was frequently entrusted with large sums of money, but knew nothing further as to his authority and made no inquiry. The clerk absconded with the money. Is A liable on the note?

7. A received a telegram which read: "Buy 1,000 bushels of wheat at market price. Bryan and Bowen." Bryan and Bowen was the name of a well known firm; but the telegram was really sent by Ryan and Browne, and the alteration in the signature resulted from the telegraph company's mistake in transmission. A made the contract in the name of Bryan and Bowen. Wheat rose in price. Bryan and Bowen and Ryan and Browne each claim a right to have the wheat delivered. The seller refuses to deliver at all. What are the rights of the persons concerned?

8. How would you answer if the agent had contracted in his own name, not disclosing his principal?

9. Answer either (a) or (b). (a) What, if any, exceptions are there to the rule that authority to execute a sealed instrument must be under seal? (b) What, if any, exceptions are there to the rule that the parties to a contract in writing must be determined from the writing itself?

10. State concisely any case in the case book on Agency, omitting immaterial facts, and telling as precisely as you can, the question presented for decision, the decision made, and the rule of law to be deduced from the decision.

Examination in Bills and Notes.

[NOTE.—Give answers first; then reasons. Discuss application of Illinois negotiable instruments law to each case.]

MR. HALE.

I.

A promissory note made by A to the order of B was obtained from A by B by deftly substituting the note for what was supposed to be a copy of a contract, the original of which A had just read and signed. B indorsed the note in blank and sold it to C, who paid full value for it and who took it without any notice of the way in which it was obtained. C sold it to D without indorsing it. D presented the note to A when due, and payment being refused, gave notice at once to B.

Discuss D's rights against A, B and C.

II.

\$35.00.

For value received, I promise to pay X or order twenty-five dollars, in one year from date, for

rent of five rooms; and the said X is to build a barn yard fence and Y is to have all the land back of the house. Y.

Y was induced to sign the above instrument by fraudulent misrepresentations, with reference to the condition of the property. X indorsed the instrument to B one day after it was executed. B paid full value for it and was bona fide in taking it.

What are B's rights against Y?

III.

(a) The payee of a note for \$500.00 indorsed it and pledged it to B to secure a loan of \$400.00. The loan was not paid and the pledgee sued the maker of the note.

How much can he recover?

(b) If the payee had obtained the note from the maker by fraud, would that make any difference?

(c) Suppose, instead of pledging the note to B, the payee had indorsed it and sold it to B for \$400.00 two months before it was due, B at the time being ignorant of the fact that it had been secured by fraud?

IV.

B was the owner of a promissory note made by A to the order of B. B indorsed the note in

blank and locked it in his safe. A burglar broke open the safe, stole the note and sold it for value before maturity to C, who took it bona fide without knowledge of the theft. C gave the note to X, who had notice that it had been stolen. B notified A not to pay the note. X threatened suit against A. A interpleaded and paid the money into Court.

As between B and X, who is entitled to the money?

V.

(a) What is meant by "an accommodation party?" (b) How does he differ from an "irregular indorser?"

VI.

A executed a note payable to B or order. B was a person living in that vicinity. A did not, however, intend the instrument for B, but gave it to C, a confederate, who was to forge B's indorsement and dispose of it. C did forge B's indorsement and sold it to D, a bona fide purchaser for value, the indorsement running to D specially. Thereafter, D, learning of the history of the paper, made E a present of it without further indorsing it, and telling E at the time what he had learned about it.

(a) Has E legal title to this note?

(b) Can he recover from A?

VII.

A was the owner of a note executed by B, payable to A or order. B paid the note in full, but A did not have the note with him, so did not surrender it. Thereafter, but before maturity, A sold the note to X, writing on the back of it, "I hereby assign the within note to X." X paid full value for it and took it in good faith. X presented note to B and gave notice at once to A of non-payment.

What are X's rights against A?

VIII.

A executed and delivered to B his promissory note, negotiable in form and complete in every respect except as to the amount, with authority to B to fill it up for any amount not to exceed \$500.00. B took the note to the X Bank in that form and asked the cashier how much A was good for. The cashier said \$5,000.00. B filled in the note for that amount in the presence of the cashier and indorsed the note, securing that amount. The X Bank sues A.

What judgment?

IX.

A, by fraudulent misrepresentations, induced M to execute and deliver to him his note for \$1,000.00. A indorsed the note to B. B paid \$400.00 cash to A, promised to pay \$300.00 more

in three days and gave his own note to A for the balance, payable to A or order in three months. At this time B did not know of the fraud practiced upon M. The next day, however, B learned of the fraud. When the three days expired A demanded the \$300.00, and B, thinking that he had to pay it, did so. Before B's note to A came due, the original note from M to A had matured. B sues M.

What judgment?

X.

(1) Outline the steps necessary to charge an indorser of a negotiable note, (a) payable July 1 at the X Bank, (b) payable on demand, the address of the maker not being given.

(2) Outline the steps necessary to charge the drawer of a bill of exchange, payable sixty days after sight.

Examination in Contracts.

MR. DECKER.

1. John Jones has been negotiating with the owner, Peter Smith, for the purchase of Lot 20 of Perkin's Addition to the city of Chicago. Smith is suddenly called out of town and before leaving tells his son Fred to see Jones next day and if he, Jones, will agree to pay \$2,000 for the lot, to take \$100 to bind the bargain and make a contract with Jones to convey the lot at any time within 30 days on payment of the balance. The son sees Jones, who agrees to the terms and pays the \$100 deposit, taking a receipt in the following form:

"Received of John Jones One Hundred Dollars, to apply on purchase price of Lot No. 20 of Perkin's Addition to the city of Chicago, Cook county, Illinois, this day sold by me to said Jones, deed to be given at any time within 30 days from date on payment of balance of purchase price.
December 20, 1909.

PETER SMITH,

Per FRED SMITH.

When Smith returns he is offered \$2,500 for the lot by X and deeds to him. Jones afterwards, but within the 30 days, tenders to Smith \$1,900 and demands a deed of the lot. Smith refuses the money and tells Jones of his deed to X, and offers to repay to Jones his \$100. Jones refuses it and brings suit against Smith for breach of contract.

Can he recover? Give reasons for your answer.

2. A, a farmer, went to B's store and inquired for rape seed. B said he had some and A ordered 25 pounds. B produced a bag of seed and weighed out 25 pounds in A's presence, and A took it home and sowed it. When the crop came up, it proved to be wild mustard, instead of rape, and besides loss of crop, A's land was seriously damaged. Neither party knew rape seed from wild mustard seed.

Is B liable to A for damages in an action for deceit? Give reasons for your answer.

3. A at Chicago wires to B at Duluth: "Will you ship me 1,000 bushels of wheat at 92 cents, F. O. B., Chicago? Answer." B replies. "Telegram received. Offer accepted. Wheat loaded to-morrow unless notified to the contrary." A did not reply to B's telegram and B shipped the wheat.

Before it arrived the price of wheat had gone down and A refused to accept it from the carrier.

Is A liable for breach of contract? Explain your answer.

4. Define contract, consideration, representation and condition.

What is an implied contract, and give an example.

What is meant by the terms executed and executory contract? Give examples.

5. A bought goods from B to the amount of \$100 on credit and later became insolvent. Being pressed by B for payment, he told him of his circumstances, and B offered to accept \$50 in full settlement, which A paid and B gave a receipt in full. A's other creditors learned of the transaction and held a meeting, at which A was present, and all agreed to settle on the same basis as A had settled with B, and A settled accordingly. Subsequently, and before the statute of limitations had run, A got on his feet again financially and B demanded payment of the balance of his original claim.

Is B legally entitled to recover if he should sue? Can the other creditors recover the balance of their claims?

Give rules and reasons for your answers.

6. A, a merchant in Champaign, ordered goods by mail from B, a wholesaler in New York, at certain prices, requesting notification of acceptance of order. B mailed a letter of acceptance, but owing to sudden fluctuation of price, wired A next morning cancelling acceptance. The telegram reached A before the letter.

Was there a contract? Explain answer.

Suppose the price had gone the other way and A had telegraphed B cancelling his order before B had mailed his letter of acceptance, would there be a contract, if B accepts by mail as requested?

7. A told B that if he would board C, A would stand good for the bill up to the amount of \$25. C ran a bill of \$15, which he was unable to pay when due, and B demanded payment from A, who refused to pay. B thereupon threatened to sue A and the latter, not wishing to be sued at that time, gave B his note for \$15 payable in 60 days, which B accepted. A refused to pay the note when due and B sued him.

As attorney for A, what defenses would you make? State rules and argue the case.

8. M, a girl 17 years of age, is an orphan, supporting herself as a seamstress. She has an old sewing maching which does fair work, but is

persuaded by an agent to trade it in for a new one, leaving a balance due of \$40 to be paid in cash at the rate of \$1 per week. After she has paid four installments, she concludes that the new machine is no better than the old one, and refuses to pay any more money or to give up the new machine unless the old machine is returned to her.

What are the respective rights of the parties?

9. A is the proprietor of an auction salesroom and advertised to sell a certain lot of jewelry as per catalogue. In the catalogue the goods were described in lots, each having a number, and were struck off by number. Lot 11 consisted of 5 dozen solid gold rings, worth \$400. Lot 10 consisted of five dozen plated rings worth \$60. B's clerk got the two lots confused, and when lot ten was offered, passed around lot eleven to be inspected by the buyers, and the lot was struck off for \$50 to B, to whom the clerk delivered lot eleven. On discovering the error, A tendered B his \$50, and demanded back the rings, and when B refused to return them, A brought an action of replevin to recover possession of them.

Who owns the rings? Explain in full.

10. A, a spinster, lives with and keeps house for her father on his farm, he supplying her with her clothes and other necessities. There are other children married and well to-do, and A tells

her father that she thinks he ought to pay her something more than her bare support for her work. He tells her she need not worry, the farm will be hers some day, and shows her a deed to the farm made out to her, which he had in his safe. Not long afterwards he is taken sick, becomes delirious, and while in that condition, A, acting on the advice of friends, takes the deed from the safe, which the father had left unlocked, and has it recorded. The father dies without regaining consciousness.

Can A hold the farm by virtue of the deed?

Can she recover anything for services from her father's estate, assuming that they are worth more than what she had received for clothes and necessities?

Explain your answers.

Examination in Constitutional Law.

(January, 1910)

PROFESSOR GREEN.

(Answer any ten questions)

1. A State constitution provided that no person should twice be put in jeopardy for the same offense. A person was indicted and tried for felony. The Court erred in excluding evidence offered by the prosecution tending to show his guilt and there was a verdict of acquittal. The question arises whether it would violate the constitutional provision to set the verdict aside and have a new trial.

Write an argument on either side of this question.

2. Congress enacts that in prosecutions in United States Courts the presumption of innocence shall be replaced by a presumption of guilt, except in cases where the defendant testifies. The question arises whether the statute is in conflict with the provision of the constitution that no person

shall be compelled in any criminal case to be a witness against himself.

Write an argument on either side of this question.

3. A State statute provided a special Court to sit without a jury to try boys and girls under 18 accused of crime.

Is the statute in conflict with the 14th amendment to the Constitution of the United States?

With any other amendment to that Constitution?

4. Can Congress make it a crime for a barber who shaves white men in his shop to refuse to shave a negro?

Can a State make it a crime?

5. A State passed a law making it a crime for an employer to hire men to work for more than nine hours a day.

State the arguments for and against the validity of this law. Refer to the decisions which bear on the question, and say how, in your opinion, it should be decided on principle.

6. State the point decided in some one of the following cases, and tell whether you think the decision right, and why.

Murray's Lessee vs. Hoboken Land and Improvement Co.

Rodgers vs. Alabama.

Barron vs. Baltimore.

Norwood vs. Baker.

Brown vs. Maryland.

7. Discuss the constitutionality of an act of Congress providing for an issue of bonds to raise money for bounties to growers of sugar.

8. In levying a special tax to defray the cost of a work of public improvement, why and to what extent is it necessary to take into account the question of benefit to the property taxed?

9. Are the following acts of Congress valid?

(a) An act fixing a maximum rate for interstate telegraph messages as applied to messages which do not relate to commercial matters.

(b) An act forbidding agreements to restrict the production of any article which is a staple of interstate commerce.

(c) An act forbidding interstate commerce in intoxicating liquor.

(d) An act forbidding interstate commerce in articles made by child labor.

10. A is about to sue B for converting a barrel of A's whisky. B intends to set up as a defense that he was a United States revenue officer and seized and destroyed the whisky is because it was illicitly distilled and that a statute of the United States made it his duty to do so

What jurisdiction over this case may be exercised by a State Court?

By a Federal Court?

11. A State levied a tax of three per cent on the profits of all businesses.

Is the tax valid as applied to the profits of a steamship company whose business consists solely in carrying on interstate commerce?

12. A State statute provided that there should be no appeal by a defendant from a judgment rendered in a trial Court for less than \$500. A defendant set up in defense a statute of the United States. If the statute properly construed applied to his case, the defense was good. The Court so construed it that it did not apply and judgment was entered against him for \$400.

If the ruling was wrong, has any Court power to relieve him from the judgment, and how can it constitutionally do so?

Examination in Court Practice.

DEAN HARKER.

1. To A's bill to foreclose a mortgage, executed by B to secure the payment of a promissory note for \$600, B answers that the contract between him and A at the time he borrowed the \$600 of A and executed the note was that he was to pay interest on the amount at the rate of one per cent per month, that he had paid as interest from time to time sums aggregating \$720, which he asks may be applied on the principal. He, also, files a cross bill in which he prays for a money decree against A for \$120 and costs.

Discuss the rights of the parties.

2. A, B, C, D and E organized an Illinois corporation under the name of the Black-Hawk Gun Company, with a capitalization of \$10,000 (100 shares of \$100 each.) Each subscribed for 20 shares and paid into the treasury \$2,000. The entire \$10,000 being expended in equipment, the corporation, through its directors, borrowed \$20,000 and expended it in extensions and further

equipment. Soon afterwards the entire plant was consumed by fire with no insurance. All that was left of the assets was a small tract of land on which the plant was located, worth not exceeding \$1,500.

Employed by the creditors, how would you proceed and what are the rights of the creditors in the premises?

3. In June, 1907, Jane Fox and John Fox, cousins of the first degree and for that reason prohibited from intermarrying under the laws of Illinois, temporarily left their home at Shawneetown, Illinois, and were joined in marriage in Kentucky. The laws of Kentucky permit the intermarrying of cousins of the first degree. The parties had no intention of locating in Kentucky and their only purpose in going to that State was to avoid the inhibition of the laws of Illinois. Fearing criminal prosecution, they agreed to keep their marriage a secret and live apart until they should take up their residence at Chicago. Soon after John secured employment at Chicago and removed to that place, promising to send for Jane in a few weeks. He did not send for her, and at the end of six months she went to Chicago and asked him to take her and live with her as his wife. That he declined to do, claiming that they were not legally married, and that he had never recognized her as his wife.

Discuss the validity of the marriage and the rights of the parties.

4. Draft a bill for separate maintenance under the facts set forth in question No. three.

5. John Watts, the owner of a team of horses and carriage which he uses to convey passengers from the Union Depot in Peoria, Illinois, to hotels in that city, had in his employ as driver Eli Mason. Mason was employed for no other purpose and the team and carriage, under instructions from Watts, could be used only in the service named. On the 12th of September, 1909, Mason, after meeting a train and discharging passengers at their hotel, engaged to take four men from a club house to a Sunday picnic, a distance of more than a mile from the depot or any Peoria hotel.

While the men were alighting from the carriage at the picnic ground Mason carelessly started the team, and one of the passengers, James Hart, was thrown violently to the ground. Mason is insolvent and Hart brings suit against Watts.

What should be the form of action? Discuss the rights of the parties.

6. J recovered a judgment for \$150 against K and L jointly before a justice of the peace. An execution being returned "no property found," J sued out a garnishee summons against X. X answers that he owes K \$100 individually, but does not owe K and L jointly.

What should be the judgment?

Why?

7. Draft an indictment for incest against James Barth and Mary Otis on facts similar to those given in case No. 9, *The People of the State of Illinois vs. James Barth and Mary Otis*.

8. A has a claim against B for merchandise amounting to \$200. He owes C for legal services already rendered \$25. He agrees to allow C \$25 out of the claim against B for prosecuting a suit against B. He assigns to C \$50 of the claim against B. C notifies B and demands that B pay him the \$50. B refuses to pay and suit is commenced in the name of A, C acting as the attorney of A. Before the case is called for trial A and B compromise the suit; B pays A \$160, which A accepts in full satisfaction of the entire claim of \$200 and the cause goes off the docket upon stipulation, at the cost of the plaintiff. All this is done without the consent of C. A is insolvent.

What are the rights of C against B?

9. The First National Bank of Champaign, on the 4th of May, 1909, loaned to A \$5,000, for which it took his promissory note, payable in three months, and as collateral, a note against B for \$6,000 in favor of A, payable August 1, 1909, duly assigned to the bank. The bank made no effort to collect the collateral note although B had abundant means to pay it when it matured. In the month of November 1909, B, lost \$50,000 in specu-

lation on the Chicago Board of Trade and thereby became insolvent. The bank still holds his note. It demands of A that he pay his \$5,000 note. A refuses, claims payment and demands that the bank pay to him \$1,000, the difference between the two notes. Discuss the rights of the parties.

If sued on the note, how should A plead?

10. Draft a declaration on the \$5,000 note mentioned in question No. 9.

Examination in Conflict of Laws.

MR. DECKER.

1. A, domiciled citizen of California, was divorced from his wife in that State under order of Court not to remarry for two years. Within that time he marries M on the high seas on an excursion trip from San Francisco to Los Angeles by boat registered from the prior port. The ship was sunk by collision before reaching Los Angeles and A was lost.

M claims a widow's right in his estate. Is she entitled to it?

Would your answer be the same if the marriage had been in Nevada and A had been killed in a train wreck?

2. Define the subject "Conflict of Laws."

What is the relation between the rules of this subject and the law of Illinois?

What is meant by "comity" as used in this subject?

If you had a case in an Illinois Court involving

the application of Michigan law, to what sources would you look to find the Michigan law?

3. A sued B in Illinois and obtained a judgment for \$5,000. The suit was begun by attachment, B having absconded from the State, and notice was served by publication. At execution sale the property attached sold for \$1,000. Subsequently B was located in Seattle, having made a rich strike in Alaska, and A sues him there on the judgment, offering in evidence a duly exemplified copy of the Illinois record. On objection by defendant, the record is excluded.

What is your opinion on appeal as to the correctness of this ruling?

Discuss fully with authority.

4. A, a resident of Chicago, owned an acre of ground and cottage at Lake Geneva, Wisconsin, where he lived with his family during the summer months. In the year 1909 the Wisconsin authorities assessed for taxes of that year the cottage and grounds, the furniture in the cottage, an automobile which was kept most of the time in Chicago but was occasionally used in going back and forth, and two recorded mortgages which Jones held on other cottage properties at Lake Geneva belonging to residents of Wisconsin. A kept the mortgages at his office in Chicago, but took them to

Wisconsin each year when he collected the interest for the purpose of endorsing the payment thereon.

Was he properly assessed on all of this property in Wisconsin?

Was he legally assessable on any of this property in Illinois?

Assume that the law of both States made subject to taxes all real estate and personal property within the State, and all personal property of residents of the State.

Give reasons as to each item of property.

5. A, a lawyer engaged in business at St. Louis, Mo., went to Colorado with his wife and infant child for the wife's health, intending to remain so long, and only so long, as the doctors thought it necessary. He retained his interest in the firm at St. Louis and occasionally went back to look after important business. After two years, his wife being no better, he decided to locate permanently at Los Angeles, California, ordered his household goods shipped from St. Louis and himself started on ahead to get settled, leaving his family in Colorado. The train was wrecked in Arizona and he was killed. The wife remained in Colorado for a year, when she married a resident of Utah and went to Salt Lake City to live, taking the child with her. In the interim she wrote to friends in St. Louis, saying that she was feeling

better and hoped to return to her former home in Missouri within a year. The boy died in Salt Lake City at the age of 15.

Trace the boy's domicile from the time of his birth. Give rules and reasons for your conclusions.

6. The boy in the previous question had been left by his father some real estate in Missouri, and some stocks and bonds and some valuable heirlooms, all of which personal property, at the time of his death, was in a safety deposit vault in Salt Lake City.

Assuming the boy's domicile at the time of his death to be as stated in your answer to the previous question, by the law of what State would the succession to his property be determined?

7. In the trial of an action *ex contractu* arising in a foreign jurisdiction, name five classes of questions which under the rules of private international law are determined by the *lex fori*.

8. If A, in question 5, had reached Los Angeles, and there set up a home, to which his wife had refused to go, and after acquiring a legal residence under the California law, A had obtained a divorce from his wife, process having been served

on the wife by publication according to law, would the decree be entitled to full faith and credit in other States?

If, after he had gone to California, she had obtained a divorce in like manner under the law of Colorado, would the decree have been entitled to full faith and credit.

State your reasons fully, with authorities.

9. A, a resident of Chicago, sent his note for \$1,000 with interest (no rate specified) to B, a resident of Detroit, by mail, the note being payable in New York. B endorsed the note in Detroit to X. A failed to pay the note when due and X sued B in Detroit.

What rate of interest is X entitled to, assuming that the legal rate in Illinois is 6 per cent, in Michigan 5 per cent and in New York 4 per cent?

Would you distinguish between the interest before and after maturity?

10. If a resident of Illinois died leaving debts owing to him by a resident of Michigan, and you were attorney for the estate, how would you go to work to collect them if the debtor refused to pay?

Examination in Criminal Law and in Criminal Pleading and Procedure.

PROFESSOR HUGHES.

(N. B. Give reasons for answers.)

1. A and B are each 20 years of age. A is on trial under a statute which makes it a penal offense for a person to dispose of property upon which he has given a chattel mortgage. B is on trial on a charge of bastardy. Each pleads infancy.

Is the plea in either case a defense?

2. A is on trial for larceny. His defense is insanity. The Court instructs the jury that "If the accused knew enough to know that he was taking property that did not belong to him, he was sane enough to be guilty of larceny." A is convicted.

(1) Is the Court's instruction prejudicial error?

(2) When, if ever, is an insane delusion a defense to a criminal charge?

3. (1) A is on trial for attempting to commit larceny. The proof shows that while acting as

clerk in a department store he secretly laid aside some of his employer's goods with the criminal intent of carrying them off when an opportunity should arise, but was detected before he could do so.

(2) B is on trial for attempting to murder X. The proof shows that he pointed a loaded and cocked revolver at Y, within shooting distance, with intent to murder him.

(3) C is on trial for attempting to introduce spirituous liquors into Alaska in violation of a federal statute. The proof shows that he sent from Alaska, where he resided, to a wholesale dealer in San Francisco an order for 100 gallons of whisky to be shipped to him in Alaska.

Which, if any, of the defendants committed a crime?

4. A is on trial for uttering a counterfeit ten-dollar bill. The proof shows that he agreed to pay B \$10 if B would knock X down with a club; that B knocked X down with a club pursuant to the agreement, and that A gave B a counterfeit ten-dollar bill in payment for his services.

Should A be convicted?

5. A leaves a suit of clothes at B's place of business to be cleaned and pressed. B finds a ten-dollar bill in an inside pocket and fraudulently appropriates it.

Of what crime, if any, is B guilty?

6. A leaves his watch with B to be repaired. B fraudulently converts it by selling it to C. Subsequently B secretly takes it from C's pocket with intent to return it to A.

Is B guilty of larceny?

7. B is on trial for receiving stolen postage stamps. The proof shows that it was agreed between him and A that A would steal the stamps and forward them to B by express; that after A stole them he deposited them in an express office directed to B; that A, who was arrested, gave a written order for them to C, a postmaster, who took them from the express office; that C, by order of the postoffice department, redeposited them in the express office so that they were forwarded to B, who subsequently received them.

(1) State the requisites of the crime of receiving stolen goods.

(2) Is B guilty of the crime charged?

8. A, B and C are indicted for the murder of X. The indictment omits to aver when and where X died. A motion to quash owing to the omission is overruled. A and B are convicted of murder and C is acquitted. A and B sue out a writ of error and the conviction is set aside. A, B and C are again indicted upon the same charge. All plead not guilty and set up former jeopardy. All are convicted and sentenced to death. They sue

out another writ of error based upon the former jeopardy.

Should the conviction be set aside and the judgment reversed?

9. A is on trial for the murder of X. The proof shows that while X was attempting lawfully to arrest A and B, B shot and killed X and that A and B then ran away. There is no proof of a common design between X and Y to resist the officer. The Court instructs the jury that "if they find from the evidence, beyond a reasonable doubt, that A intended to resist arrest by using extreme violence he is guilty of shooting the same as if he had fired the shot himself." A is convicted of the crime charged.

Is the Court's instruction prejudicial error?

10. A, who is indicted for the murder of Y by shooting him in the head, is acquitted on the ground of a fatal variance between the averment and the proof as to the mode of the killing of Y. Subsequently he is indicted for the murder of Y by beating him on the head with a club and pleads *antrefois acquit*.

Is A's plea good?

Examination in Damages.

(February, 1910.)

MR. COSGROVE.

I.

Action under the Dram Shop act to recover damages for injury to means of support. Plaintiff shows that defendants have sold liquor to her husband while intoxicated and with knowledge that he was an habitual drunkard, but fails to show any injury to her means of support. The jury are instructed that the sales constitute a violation of the plaintiff's right if proven as alleged, and though no substantial injury be shown to her means of support, yet if the sales were made to the plaintiff's husband while he was intoxicated or with knowledge that he was an habitual drunkard, then the jury might in their judgment allow exemplary damages in addition to nominal damages. Is this instruction correct on the question of damages?

2.

Trespass. Evidence shows an illegal and wrongful assault and a consequent sickness and

inability on the plaintiff's part attended with considerable expense. The jury return a verdict for the plaintiff and assess his damages at six dollars. May the plaintiff make a motion for a new trial? If so, upon what ground, discussing fully, or could the defendant ask that judgment be entered against him for the six dollars and immediately pay the same, thus ending the litigation?

3.

Defendant agrees to deliver 1,000 baskets of grapes, at 15 cents per basket, on August 5th to plaintiff, and fails. Plaintiff consults his attorney, who immediately commences an action for breach of contract. The following day the plaintiff communicates with a commission merchant who sells him 1,000 baskets of grapes of a similar kind and quality at 13 cents per basket. The trial of the case is begun and the above facts shown. Defendant asks for a nonsuit, should it be granted? If not, for whom should the verdict be entered and for what amount?

4.

Defendant negligently conducts its train and a collision results. A is injured in the wreck and suffers a physical and mental collapse, from which he never recovers. Six months later and never having regained his strength of mind, he commits suicide, having all the time been insane. Action

by administrator, question arises as to whether there can be a recovery for the death?

5.

Action for failure of the defendant to pay to a creditor of the plaintiff a certain sum of money intrusted to him for that purpose. Plaintiff seeks to recover damages caused by the sale of his goods at a sacrifice, in an action against him by the creditor. Can there be such a recovery?

6.

Defendant wrongfully removes coal from beneath the plaintiff's land and a building is subsequently destroyed by the sinking of the surface. An action results in a verdict for the plaintiff. Afterward a second building is ruined by a second falling of the surface and another action is begun to recover the damage done to the second building. Special plea of the defendant urging that the matter has been completely settled in the first action. Discuss the merit of the plea.

7.

Action against a railroad company for injuries to the plaintiff caused by exposure while waiting for the opening of the defendant's depot. Defendant asks the court to charge that if the plaintiff was informed that the depot would not be

opened that night for the train on which she desired to take passage it was her duty to protect herself from the consequences of exposure to the inclement weather. Should the charge have been given?

8.

The defendant undertakes contract with the plaintiffs to keep safely the body of their deceased child until they should be ready to inter the same. On breach of this contract is the defendant liable for mental anguish caused thereby?

9.

What is meant by the rule of certainty? Discuss fully.

What do you say relative to the recovery of lost profits in an action for breach of contract?

State the rule laid down in *Hadley vs. Baxendale*.

10.

A chauffeur left an electric motor truck standing in the street for ten minutes while delivering goods, after disconnecting the power from the machine, shutting it off from the batteries in the usual way, and setting the brakes, but the power was turned on by some boys in his absence and the truck was run into the plaintiff's drug store. Plaintiff seeks to recover for the damage done from the owner of the truck. How should the case be decided?

Examination in Equity.

MR. HALE.

Give reasons for every answer.

I.

(a) A contracted to sell and B to buy 5,000 shares of stock in the Valley R. R. Co., a corporation, for \$3,000; the stock to be delivered on October 1; payment to be made in installments of \$100 per month, beginning on said October 1. The Valley R. R. Co. had been but recently organized and its road was only partly constructed. On October 1 B tendered the first installment. A refused it and refused to deliver the stock.

B asks specific performance of the contract.

(b) Suppose instead of agreeing to pay money, B had to agreed to pay for the stock by conveying certain land on January 1, following.

Would your answer be the same?

II.

Jones contracted to sell and Smith to buy two separate tracts of land, designated as Blackacre

and Whiteacre. Blackacre is in Illinois and Whiteacre in Indiana. Jones lives in Wisconsin. Jones refuses to convey when the time arrives for performance.

How can Smith secure the land? Is there more than one way in which he can secure it?

III.

A held several medals for speed as a typewriter operator. He contracted with the Green Typewriter Company to demonstrate their machines throughout the United States for a period of one year, and the company agreed to retain A for this period and pay him a certain salary per week. A commenced the work, but after one week entered the employ of Y, a rival company. The Green Typewriter Company thereupon sought relief in equity, praying: 1st. That A be restrained from refusing to carry out his contract with the Green Company. 2d. That A be restrained from entering the employ of Y or anybody else, and 3d, for such other or further relief as to equity might seem proper.

Should relief be given in either of the foregoing forms, or in any other form?

IV.

A wrote a letter to B, who at the time was in A's employ. The letter contained much information concerning A's business and future business

plans. This information would, if possessed by A's competitors, give them a trade advantage over A. Shortly after receiving this letter B left A's employ, and because of ill will for A was making arrangements with the X newspaper to publish the letter. A sought an injunction against both B and X, asking that the publication be restrained.

Should the injunction have been granted?

V.

A conveyed a strip of land in fee to the K R. Co. for the construction of a railroad, the strip being located between A's dwelling and the public highway. In consideration of this conveyance the K R. Co. agreed to construct a crossing for A by tunnelling under the track; to erect a warehouse for A on land of A, adjoining the strip conveyed; and further, to construct a side track from the main line to the warehouse. The K company has refused to fulfill its agreement either in whole or in part.

Can A secure any relief in equity?

VI. AND VII.

On July 1, A and B entered into a contract, in writing, wherein A agreed to sell and B to buy Whiteacre, possession to be given September 1 and deed to be given and final payment of \$5,000 to be made January 1. At the time the contract was

made a house stood on the land insured in A's name in the sum of \$2,000. Interest on the unpaid \$5,000 was to start on September 1, and figured up to \$30.00 per month; but nothing was said about rents and profits. The house was rented for \$40 a month. September 1, B refused, without any justification, to take the property, and continued his refusal until January 1, when he refused to make the final payment as agreed. On October 1, the house was accidentally destroyed by fire and the insurance money was paid to A. On January 10, A died and on January 15, B died, no conveyance having been made. After the contract was made A willed all his real property to his wife and all his personal property to his son, P. B left an heir at law, K, and a widow and M, heir to his personal estate.

Work out the rights and obligations of each party concerned, giving reasons.

VIII.

(a) Give five different grounds of equity's jurisdiction and an illustration of each.

(b) Discuss the following: "The remedy in equity must be mutual; and where a bill will lie for the purchaser it will also lie for the vendor."

Examination in Evidence.

June 29, 1910.

PROFESSOR HUGHES.

(N. B. Give reasons for answers.)

1. A, in 1892, devised a farm to B, who left home in 1895 and was last heard of in 1899. A died in 1900. B's executor, C, now brings ejectment against D, A's heir at law, to recover the farm.

Who should obtain judgment, C or D?

2. A, who was struck by an engine while crossing the tracks of the I. C. Ry. Co., sues the company for damages for the injuries sustained. The company admits that it caused the injuries but denies that there was any negligence on its part. A statute provides that "In all actions against railroad companies for damages done to persons or property, proof of injury inflicted by the running of locomotives or cars of such company shall be prima facie evidence of the want of reasonable

skill and care upon the part of the servants of such company in reference to such injury."

Upon whom is the burden of proof?

3. A made a grant to his son B of a certain farm. In a suit by A's other children, after his death, they claim that the grant to B was intended by A as an advancement. B denies this, and offers in evidence, against objection, an admission by A, made after the grant to B, that he had given to all his children equal amounts of property.

Should the objection be sustained?

4. A sues the Big Four Ry. Co. for damages caused by the alleged negligence of the company in running one of its trains into A's team and buggy while he was attempting to cross its tracks. The company pleads A's contributory negligence. A admits that before attempting to cross the tracks of the company he did not look either way for trains.

Who should determine the question of A's contributory negligence, the Court or the jury?

5. A is on trial for feloniously setting fire to his residence for the purpose of obtaining the insurance thereon. The State offers testimony, against objection, that previously to this fire A had

owned two other residences which were insured in different companies, which burned while occupied by him and that upon the policy of each he obtained the insurance.

Should the objection be sustained?

6. A sues B for damages for an assault and battery. B offers testimony, against objection, of his good character as a peaceable citizen, both in bar of the action and in mitigation of damages.

Should the objection be sustained?

7. A sues the Wabash Ry. Co. for damages for negligently causing the death of A's intestate. The company offers in evidence, against objection, testimony given by W at the inquest of deceased. W is now dead.

Should the objection be sustained?

8. A sues B in ejectment to recover a certain farm left by A's mother, M, who died intestate. B sets up that A was born before his mother was married. A denies this. B, to prove his contention, offers in evidence, against objection, a declaration by N, M's sister, since deceased, that A was illegitimate. A statute provides that an illegitimate child shall inherit from his mother.

Should the objection be sustained?

9. In a suit by A against B, A offers in evidence, as an ancient document, a certain will. B objects on the ground that it is not an ancient document. The proof shows that it was executed less than thirty years before the suit was commenced, but more than thirty years before it is offered in evidence, and that the testator died twenty-nine years ago.

Should the objection be sustained?

10. State as many exceptions to the hearsay rule as you can and enumerate the requisites of admissibility of each.

Examination in Illinois Procedure.

DEAN HARKER.

1. A holds a promisory note for \$600, executed by B and C, payable to A at the First National bank of Champaign on February 1, 1909. B now resides at Wayne, Nebraska, and C resides at Fort Worth, Texas. B owns lot 6 in block 4 of Coler's addition to the city of Urbana, Illinois.

Mention in their order the steps A should take to secure satisfaction of his debt out of the property.

2. A, a resident of Coles county, Illinois, dies intestate. He dies seized in fee of 160 acres of farm land situated in that county, and a house and lot worth \$1,500 situated in Mattoon, and occupied by him, his wife and minor child as a home. His personal estate does not exceed in value \$2,000. He dies owing creditors \$4,000.

Mention in their order the proceedings necessary to a proper administration of the estate, and a discharge of the claims of the creditors.

3. X died, leaving as his only heirs at law S, a brother, and Y, the son of a deceased sister. S procured letters of administration, and after he had been for several months engaged in administering the estate a will duly executed was discovered. By the will Y was made executor and sole legatee.

Employed by Y, how should you proceed?

4. A, without the consent or knowledge of B, enters B's barn and takes a horse belonging to C, and rides him away and attempts to sell him.

Of what is A guilty?

Mention in their order the proceedings to secure his proper punishment.

5. Draft a declaration in ejectment in which the plaintiff, John Doe, claims to be the owner in fee of lot 4, block 6 in Champaign, Illinois, and that Richard Roe holds possession of the same.

6. A claims to be the owner of certain lands in which B asserts an adverse title. Under what conditions should A sue in ejectment?

Under what should he sue by bill in equity?

7. What are the six different grounds upon which the action of forcible entry and detainer may be brought?

8. X has been arrested by the sheriff of Champaign county upon a telegram from the chief of police of Memphis, and is confined in the county jail without a mittimus.

Mention in detail the proceedings whereby X may secure his liberty.

9. Explain the difference between a temporary and a permanent injunction.

Who may grant the former?

What are the remedies of a party against whom a temporary injunction has been wrongfully issued?

10. A, without permission, cuts timber from B's land and has it manufactured into lumber.

What are the different remedies open to B?

Private Corporations.

TERENCE B. COSGROVE.

I.

(a) Give the distinctions between a corporation and a partnership.

(b) What is the difference between the capital and the capital stock of a corporation?

(c) Give the requisites of a corporation, de facto.

(d) Within the meaning of what provision in the Federal Constitution is a corporation a citizen, and within what provision is it not a citizen?

II.

The stockholders of a corporation carrying on its business at a small loss, at a shareholder's meeting held for that purpose, vote to sell all the property, and accordingly a deed is prepared conveying such property to B all the share holders signing the deed. The grantee goes into possession and is negotiating the sale of the same land to your client.

What is your advice regarding the title of B?

III.

By the laws of Congress bonds and securities of the United States are exempt from taxation. The Illinois National Bank has all its capital invested in United States bonds and securities. A question arises as to whether the State has the power to levy a tax on the franchises of the bank.

Answer, discussing fully.

IV.

A general law providing for the incorporation of companies specifies the number of persons required to incorporate, the taking of an acknowledgment before an officer of a Court of record, the filing of articles of association with the Recorder of Deeds, etc., and finally, when a compliance has been made with the foregoing requirements, it is provided that "the person acknowledging and filing the same and their successors shall become and be a body corporate, etc." A substantial compliance is made by the requisite number of men, who fail to perform any further acts after the filing of the articles and hold no corporate meetings. The law is then repealed. The parties then hold corporate meetings and claim to be a corporation. The Attorney General brings a proceeding in the name of the State, claiming that there has been no acceptance of the charter.

Should the proceedings prevail?

V.

Quo warranto against the XY corporation. The act under which they organized is offered in evidence and its admission objected to on the grounds that it is unconstitutional. All other requisites are complied with, the only question being as to whether there can be a de facto organization under an unconstitutional act.

VI.

What do you say as to the right of a party who has contracted with a corporation de facto as such, after receiving the benefits of his contract, to allege a defect in the organization of such corporation due to the fact that the act authorizing incorporation is unconstitutional, as affecting its capacity to enforce such a contract? Give the Illinois law only.

VII.

(a.) What are the distinctions between a contract to survive and a contract of subscription, for shares of stock in a corporation?

(b.) Is there any distinction, and if so what, regarding the payments of subscriptions to the original stock and subscriptions to an increase of stock with reference to acquiring rights as a shareholder?

(c.) X subscribed for stock in the A B Company, and before the subscription is accepted becomes insane. Delay in the appointment of a con-

servator ensues and the corporation accepts the offer to subscribe. The stock is tendered to the conservator who refuses to accept. Action on the contract of subscription.

Give the Illinois law.

VIII.

Defendants secure an option to purchase mining property for \$50,000. They organize a corporation for the purpose of purchasing the same and represent to the subscribers for stock the nature of the property as it actually is, without in any manner deceiving the subscribers as to its merit or value, but state that it will cost the corporation \$75,000. The corporation then, through the defendants, its officers, purchases the option nominally for \$75,000, the defendants paying \$50,000 and converting the remaining \$25,000 to their own use. This action is to recover that amount. No fraud is alleged or shown; the properties are shown to be actually worth \$75,000; there were no misrepresentations of any kind other than as to the cost of the option, and each subscriber paid his money with the understanding that the properties would cost the corporation \$75,000.

In whose name should the action be brought, and should there be a recovery?

IX.

Three persons owning a majority of the stock of an incorporated company organize for the pur-

pose of mining coal upon their land, and having leased the premises, formed a partnership for the prosecution of the business, entered into an agreement as between themselves that they would elect the directors of the company; that they would determine among themselves as to its officers and management, and that if they could not agree they would ballot among themselves for the directors and officers and that the majority should rule, and their vote be cast as a unit so as to control the election. A bill is filed for the purpose of having the agreement declared void and as contrary to public policy.

Should the relief be granted?

X.

Discuss at length the powers of the majority of the stockholders.

Examination in Personal Property.

(February, 1910)

MR. COSGROVE.

1. Define: (a) Lien. (b) Constructive possession.

Give two ways in which a lien may be waved.

Name three ways in which a wrongdoer may obtain title to a converted chattel.

Give five leading distinctions between real and personal property.

2. A loans his horse to B who fails to return it, claiming that A has given the horse to him. A brings replevin. Would the action prevail in Illinois at the present time?

3. A, the owner of certain chattels, leaves them in storage. While there B converts them and retains possession for a period of four years, then assigns them to C, who is sued by A after having possession of the chattels for a space of two years. The Statute of Limitations bars a suit

not commenced within five years from the time it accrued. C pleads the statute; is it a good defense?

4. Action by the Kelly Coal Co. for ten thousand tons of coal, dug and removed from its land in the State of Illinois. The coal was knowingly and wrongfully removed by the Eureka Coal Co. and carried to Chicago and there sold, to the defendants, the C. R. I. & P. Ry. Co., who were not chargeable with any intentional wrong or bad faith. The coal in the vein, (unmined) was worth \$1.00 per ton; cost of mining \$.25 per ton; cost of hauling to mouth of shaft \$.25 per ton; and the cost of freight to Chicago \$.25 per ton. The coal was sold to the defendant for \$1.75 per ton.

How much should the plaintiff recover per ton for the coal?

5. A delivers wheat to the elevator of B, and not wishing to sell for the then market price, enters into the following agreement with B: The wheat is to be left at the elevator, A to call within fifteen days and make a final disposition either by withdrawing the wheat or selling it. Prior to that time B realizing that wheat has reached a high price, sells the grain without the knowledge of A, and later replaces the wheat in like quantity and quality. Upon the 15th day A, hearing of the wrongful sale and substitution, goes to B and demands the price received by him at the time of

the wrongful sale. B refuses to pay such amount but tenders the substituted wheat and also agrees to pay the then market value.

Could A recover the amount demanded? If so in what form of action and upon what theory?

6. X, upon whose property a trespasser has cut and removed logs, locates the logs mixed with other logs cut from other land. X can not pick out his own logs but realizes that there are logs other than his in the pile.

What portion would he be entitled to seize?

1. If the logs other than his belonged to the trespasser?

2. If they belonged to another innocent land owner?

7. The Twin City Paper Co. purchases waste paper by the crate, and engages boys to pick it over at a warehouse. A boy so engaged, and being paid by the day, in sorting a crate of paper purchased from the A. B. Dry Goods Co. finds a \$50.00 bank note. The true owner not being found, the question arises as to whom the note belongs.

How would you advise?

8. Having lost a valuable gem, the owner advertises his loss and offers to pay a liberal reward for its return. The finder, knowing of the offer,

immediately notifies the owner, who demands the jewel but refuses to pay any reward. The finder refuses to deliver, asserting a lien for the reasonable value of his services. Replevin is brought.

How should the case be decided?

9. Discuss fully the lien of an inn-keeper at common law.

10. Discuss rights of property in wild animals.

Examination in Quasi Contracts.

MR. DECKER.

1. A had been saving money in a bank for a vacation, and before leaving went to the bank to draw his money. The teller, on inquiry, told him that he had a balance of \$235, having overlooked two checks which had been cashed that day, amounting to \$75.00. A drew a check for \$235 and received the money. He was surprised to find he had so much, but did not have his check-book with him and was not sure of the true balance. He spent all the money on his trip.

Can the bank recover the \$75.00 overpaid? Explain your answer fully.

2. Assume that A is liable under the preceding state of facts and that M owed A \$100, of which the bank had knowledge, and commenced suit by garnishment immediately on learning of the mistake.

Will the action lie?

3. Define and classify quasi-contracts.

Differentiate a quasi-contract from a contract implied in fact. Illustrate.

4. A, a doctor, while riding in the country, saw an automobile overturned in the ditch and M unconscious lying near it. He took M in his carriage to a hospital, where he worked over him several hours before restoring him to consciousness. On the way to the hospital A met X, a garage keeper, and told him about the automobile, which was in a place where it might be greatly damaged if allowed to lie. X went out after the machine, repaired it sufficiently to get it into town, and kept it at his garage until M was able to get around again. A and X each rendered reasonable bills for their services.

What are their rights if M refuses to pay? Explain answer.

5. A hired out to M as a traveling salesman for a year at an annual salary of \$2,000, payable \$100 a month and balance at end of the year. After ten months A is offered a much larger salary to work for X in a different line of trade, if he will go to work at once. A applies to M for a release and settlement, which M refuses, and A thereupon quits M and goes to work for X.

Can he recover any further compensation

from M, assuming that the contract was made in Illinois?

Would it make any difference if the contract were made in some other State? Discuss fully with authorities.

6. A took a contract from X to put a new roof on X's house in Champaign for \$500. When the work is half done, the house burns down without fault of either party.

Can A recover anything for work done, and if so, what is the measure of his recovery?

Suppose the house were in New York, and the contract made there, would the rule be the same? Explain answers.

7. A purchased a plate of oysters at a hotel and found a pearl in one of them worth \$150. The hotel keeper laid claim to it, and A gave it up, supposing that he had no right to retain it as his own. Later he was advised that the pearl was his and went back and demanded the pearl from the hotel keeper, who refused to return it, having already sold it for \$100. A thereupon commenced suit in assumpsit on the money counts.

Can he recover, assuming that the pearl originally belonged to A, the finder?

8. A is a wholesale liquor merchant in Chicago and made a business of establishing agencies in local option territory to which he sent liquor in concealed packages for sale in such places. B, a druggist, was agent of A in Urbana, and sold liquors furnished by A to the amount of \$500, of which amount he had deposited \$300 in a bank to A's credit, sending the deposit slip to A. Before A drew the money, B was arrested for the illegal sale of liquor, and was subsequently convicted. On instructions from B, the bank refused to honor A's check for the deposit. B never settled with A for the balance of \$200. A sues both the bank and B.

Can he recover from either? Discuss fully.

9. A, a manufacturer of boilers and engines, contracted with B to build and install, ready for use, a power plant in B's factory, for the sum of \$10,000, payable when the work was complete. Special foundations were required and built by A's men, and the machinery, which was built according to specifications in A's shops, was practically complete and ready to deliver, when B repudiated the contract.

Has A any quasi-contractual remedy? If so, what is it? In what form of action would you bring suit as attorney for A, and what would be the nature of your declaration? What would be the measure of your recovery, if any? Would A have any other remedy, and if so, what?

10. A agrees orally to sell B a farm; B goes into possession immediately, after paying a small cash payment, and it was understood that the balance was to be paid in installments out of the crops as raised. The windmill blew down and B purchased and erected a new one; he also built some new tool sheds. Later A refused to sell and ejected B from the premises.

Can B recover anything for the improvements, and if so, how much?

Suppose B abandoned the place and refused to complete the purchase, is the rule the same?

Examination in Real Property.

ASSOCIATE PROFESSOR NORTHRUP.

1. (a) A and B were adjoining land owners. The slope was such that surface water naturally ran from A's land to B's. For over twenty years B had collected and used this water on his land. A now built drains which collected the water and prevented its running on B's land.

Is A liable to B?

(b) If, after the twenty years user by B as described above, instead of A collecting the water on his land, B had built a house on his own land and had so constructed the foundations that he thereby prevented the surface water flowing from A's land to B's land and caused it to collect on A's land, would B be liable to A in Illinois and generally?

2. A demised premises to B by lease under seal. B covenanted in the lease "for himself, his executors and administrators" not to use the premises for anything except a tobacco store and to buy all the tobacco sold in the store from A, who was a tobacco dealer. B assigned the term to

X. X used the premises for a saloon and bought the tobacco sold in the saloon from Y.

Is X liable to A for breach of the covenants in the lease?

3. Defendant owned two adjoining farms, called A and B. There was a way appurtenant, created by grant, to farm B for agricultural purposes, across the plaintiff's land, which adjoined farm B. Defendant used the way to haul lumber to farm B. The lumber was stored there, and later it was used to build a hay barn on farm A.

Is defendant liable to plaintiff in trespass?

4. If A and B are adjoining owners and A builds a party wall, half on each side of the line, under an agreement with B that either may use it in building and B covenants for himself, his heirs and assigns, that if he or his heirs or assigns use it, the one so using it will pay one-half the original cost; and then, later, B sells his land to C, and C builds, using the wall, should the covenant bind C so that A can recover against C under the agreement with B?

5. If defendant is operating a factory that emits foul and noxious odors that annoy plaintiff, his neighbor, and diminish the value of plaintiff's property,

(a) What in general are plaintiff's rights?

(b) How would prescription affect the case?

6. A purchased from B a strip of land fifteen feet wide through B's land and constructed in said strip a canal to supply water for power for A's mill. In the course of time the water gradually and imperceptibly encroached upon the banks until it had spread over B's land on each side, making a stream twenty feet wide. A now ceased using the mill and drew the water from the canal.

Does A own all the land that had been covered by water, or only the strip fifteen feet wide?

7. X was in possession of land without having title. He devised it to A for life, remainder to B in fee simple. A entered, claiming under the will, and held for twenty-two years. A then discovered that X had no title, and A conveyed the land to C and died a year later. B brings ejectment against C.

What result?

8. A owned land on the north side of Y street and the fee of the north half of the street. He conveyed the land to B by a deed which described the south boundary of the land as follows: "To a stake standing in the north line of Y street, thence west sixty-six feet along said line of Y street to another stake," etc.

Did B take title to the center of the street or to the north side of the street? State the general law and the Illinois law.

9. X owned two lots, A and B. A dwelling house was on A and a barn on B. An underground drain from the house on A ran across B to the sewer in the street. There was another street with a public sewer in front of A. In the barn on B was a pump drawing water by an underground pipe from a cistern under the house on A. X sold lot B to Y, nothing being said about the drain or water supply.

Have the respective parties the right to maintain the drain and water pipe for the pump and to use them, as existing at the time of the sale?

10. A conveyed premises to B with covenant of warranty. B conveyed to C with similar covenant. None of the parties had possession. C attempted to take possession and found that A had never had any title or right to convey.

Discuss the question whether C can recover against A on A's covenant with B.

Examination in Torts.

MR. HALE.

Give reasons for every answer.

I.

Discuss the difference between accident and mistake as affecting a person's liability for damage caused to another. Give illustrations and present arguments for and against the law as it is established.

II.

A father, with his sleeping child in his arms, negligently lies down in the street and goes to sleep. The driver of a wagon sees them there asleep. He intends to avoid them but does not use due care in turning out; and hence the wheel of the wagon goes over them, breaking the arms of the father and the legs of the child.

Is the driver liable to any one, and if so, to whom and for what?

III.

X with intent to keep Y from leaving her house told her that if she did he would break up her furniture. In consequence of X's threat Y remained in the house for a period of three hours, notwithstanding a previous intention to go out on business.

Y sues X for false imprisonment. Can she recover?

IV.

A reached over a fence and struck B's horse, which was on B's land. B consults you as to his rights against A.

What additional facts would you need before advising him fully as to his rights?

V.

A negligently dropped a loaded revolver in a public street. A wagon ran over the revolver causing it to discharge. The bullet struck Y, a pedestrian, on the sidewalk opposite where the revolver was dropped, causing a serious wound in his head. One year later, Y as a result of the wound became insane and while in that condition committed suicide.

What is the extent of A's liability?

VI.

X was crossing the street wheeling her baby in a carriage. B unintentionally but carelessly drove

his automobile against the baby carriage. As a result the baby was thrown to the street and seriously injured. X, the child's mother, suffered a severe nervous shock and was ill for several months.

Give reasons for and against recovery in an action by X against B for her own injuries.

VII.

The Baldwin Manufacturing Co. manufactured and sold to the Illinois Central R. R. Co. an engine. Two of the drive wheels were cracked in the making, but these cracks were very carefully concealed by the employees of the manufactory. On its first trip the drive wheels broke. The engine was derailed and a serious wreck ensued, in which X, a passenger on the train, was seriously injured.

X consults you as to his rights against the Manufacturing Co., and also the Railroad Co.

VIII.

A ran his automobile against B, knocking him down and breaking his arm.

Prepare instructions to the jury such as will be necessary to enable it to reach a proper verdict when all the evidence is submitted.

IX.

Give the meaning of "*damnum absque injuria*" and "*injuria sine damno*," explaining the meaning of "*injuria*" fully; also give illustrations.

X.

B, a child 4 years of age, without invitation, wandered into the house of Y, a neighbor. Y saw the child enter and knew that he was amusing himself by running from one room to another. Y had a bucket of hot water on the floor which she had been using for scrubbing. The bucket was near a door through which the child had been running. The child stumbled, fell in the bucket and was seriously burned.

Can there be any recovery on behalf of the child?

Examination in Trusts.

(First Semester, 1909-1910)

PROFESSOR NORTHRUP.

1. X deposits with Chicago bank for collection a note due from Y in New York. Chicago bank sends note to New York bank which collects same and credits Chicago bank with the proceeds.

What are the rights of X if Chicago bank had failed before collection by New York bank?

What are his rights if failure of Chicago bank is subsequent to collection?

2-3. James has two policies of insurance, A and B, on his life, payable to his estate. He assigns by deed to Henry in trust for Mary, to whom he is engaged, both policies and accumulations, delivering to Henry policy A, but retaining policy B. Mary breaks the engagement and James persuades Henry to destroy the assignment and to return to him policy A. James receives from the companies the accumulations on each policy and dies. The companies are about to pay the face of

the two policies to his administrator, when they and Mary first learn of the assignment to Henry.

Discuss all possible rights of Mary against the parties to the transactions and the theories on which they are based.

4. X assigns by deed all his estate to A in trust for B. X has a note due from Y which he delivers to A, but fails to endorse.

Who can compel Y to pay the note, and what will be the action? Give reasons.

5-6. Carnegie by will gives property to Pritchett to hold in trust to apportion the income of one-half annually among such hospitals, retired college presidents or heroes, as he shall think most deserving; and as to the income of the other half, to apportion the same annually among such orphan asylums, hospitals or colleges as he shall think most deserving. Pritchett is about to apportion the entire income among ten colleges, five hospitals and two retired presidents, when heirs of Carnegie bring bill for injunction to restrain him.

What decree? Give reasons.

7. In a jurisdiction where the Statute of Frauds as to trusts in lands is in force, X, by a

deed absolute on its face, deeds real estate worth \$10,000 to A, relying on his prior oral promise to convey to such hospital as X should later designate. A, in violation of the express desire of X, conveys half the property to an orphan asylum for \$1,000 and the other half gratuitously to a hospital.

What are the rights and remedies of X? Give reasons.

8-9. T secures by fraud from X a deed of land. He then agrees with A, in consideration of her promise to marry him, to convey the land to her. But before marriage he mortgages the land to M for \$1,000, and later mortgages the same land to N for \$2,000, neither A, M nor N knowing of the rights of X or of each other. T then dies unmarried. The land is sold for \$5,000, and proceeds paid into Court.

What are the rights of X, A, M and N?

Trace the course of the legal and equitable interests in the land.

10. T holds real estate in trust for B. B mortgages his interest to M for \$4,000 and then to N for \$4,000, N being ignorant of the prior mortgage to M. N informs T of his mortgage. B then borrows \$4,000 of T, the trustee, and mortgages

his interest to him as security, T being ignorant of the mortgage to M. Land is sold for \$10,000 and proceeds paid into Court.

How shall they be divided? Give reasons.

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Papers used at the

SECOND SEMESTER EXAMINATIONS

1909-1910

—IN THE—

COLLEGE OF LAW

—OF THE—

UNIVERSITY OF ILLINOIS



June, 1910

UNIVERSITY OF ILLINOIS

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Examination in Bankruptcy.

MR DECKER.

(Give reasons.)

1. A was a manufacturer of specialties which he sold on the mail order plan, and was largely dependent on advertising. On January 1, 1910, he made a year's contract with B, an advertising firm, to place his advertising for a year for \$24,000, payable \$2,000 at the end of each month. January 31st he paid \$1,000, promising to send the balance in a few days, but failed to do so. On February 28th B threatened to cancel the contract and sue for damages unless payment was made in full to date, but finally accepted \$1,000 on account, on A's representation that trade had been poor but was rapidly picking up under B's advertising campaign, and in three or four months he would be on his feet, but if pressed at once, he could not pay over 25 cents on the dollar. He was in fact hopelessly insolvent at the time.

(a) If A was adjudicated a bankrupt on the petition of other creditors, filed April 1, 1910, could B prove his claim without surrendering the two payments he had received, or either of them?

(b) For what, if anything, could B prove?

(c) Could the trustee recover either of the payments made provided B did not prove his claim?

2. A, in the foregoing question, gave his banker a mortgage on his plant for \$5,000 on March 15, 1910, to cover a \$2,000 overdraft, \$1,000 borrowed at the time and future advances to be made. The bank advanced A \$1,500 on March 31st, after it knew that A was in a precarious financial condition, for the purpose of paying judgments against him, and \$500 more on April 2, but without knowledge that a petition had been filed.

Is the mortgage a valid lien on the property after adjudication, and if so, for how much?

3. Among the acts of bankruptcy alleged against A were the following:

(1) That he had sold and transferred certain of his property with intent to hinder, delay and defraud his creditors, in that he had on March 25, 1910, sold and assigned all of his book accounts, of a reasonable value of \$10,000, to X, his brother, and had taken in payment therefor a note for \$2,500 payable in four years from date.

(2) The payments made to B as related in question 1, with intent to prefer B.

(3) The mortgage to the bank as related in question 2, with like intent.

(4) That M, A's wife, had attached goods of A in a suit commenced on March 25, 1910, which

was still pending, with the further allegation that A and his wife were living together and A had caused the suit to be brought.

(5) That certain of A's goods had been seized by the sheriff and advertised for sale on April 2, 1910, on an execution issued on a judgment recovered by Y on November 20, 1909.

Which of the above are sufficient and which are not, with reasons in each case?

5. When may the following be bankrupts?

- (a) Aliens and non-residents,
- (b) Infants and married women,
- (c) Corporations,
- (d) Partnerships.

4. Which, if any, of the following claims are provable against the estate of A?

(a) Claim of former superintendent, who had a contract to January 1, 1910, and was discharged without cause on March 15, 1910.

(b) Judgment recovered February 1, 1910, for assault and battery committed by A on G.

(c) Liability of A on a note which A had received from C and endorsed to D, said note being not yet due.

(d) Claim of a livery stable keeper for a horse which A had hired and killed by fast driving.

(e) On an unexpired lease of a house which had ten months to run at the time of the petition, no rent paid since February 1, 1910.

6. Who may make a petition for involuntary bankruptcy?

What jurisdictional facts must be set up in a creditor's petition?

7. A, who is insolvent, deeds certain land to his daughter, with intent to prevent B, a judgment creditor, from levying execution on it. Subsequently A receives a legacy and pays B and all of his other creditors. Later C recovers a judgment against him and levies on the land. N brings a suit to enjoin the sale and avoid the levy.

Which should prevail?

8. A and B, both residents of Michigan, make a contract there. A defaults and subsequently obtains a discharge from all of his existing debts under the Michigan insolvent law, B not proving his claim or taking any part in the proceeding.

(a) Can A successfully plead his discharge if subsequently sued by B in Michigan?

(b) If sued in Illinois, where A has resided since his insolvency in Michigan?

(c) Or if A remains a resident of Michigan and B had changed his residence to Illinois before

the insolvency proceeding, and now sues in Michigan?

(d) Or if A and B both become residents of Ohio and A was discharged there, under Ohio law, and is sued in Ohio?

9. A makes an assignment for the benefit of creditors under the existing law of Illinois. Five months later certain of his creditors file a petition in bankruptcy against him and he is adjudicated.

What, if any, rights has the trustees of his estate in the property in the hands of the assignee?

10. A gave an absolute deed to certain lands to B, to secure a loan with the understanding that the land would be deeded back on payment of the loan. No fraud was intended, but A was at the time in embarrassed circumstances. C, a judgment creditor of A, levied on and sold the land, and the purchaser filed a bill to remove the cloud on his title caused by the deed to B.

Which should prevail?

Examination in Contracts.

MR. DECKER.

(Give reasons.)

1. A bought goods from B for \$100.00, giving B a note of C for \$50.00 and his own note for the balance. Neither note was paid at maturity.

Is B entitled to recover from A any more than the amount of his note?

If so, how should he proceed?

2. Name five different classes of contracts which are held to be void as against public policy, and give an example of each.

3. A purchased a stock of goods from B, and as part of the purchase price agreed to pay B's debt to C. C was notified of the transaction by mail and wrote A that he was satisfied and would look to C. Before A received C's letter he traded back with B, who again assumed the debt to C and released A therefrom.

What are C's rights against A?

Against B?

4. A owed B \$30 for goods but claimed the right to recoup \$5 damages because the goods were not as represented, and tendered B the sum of \$25 on condition that B would give him a receipt in full. B refused and sued A. The jury found that only \$25 was due and gave judgment for A on a plea of tender.

Is the judgment correct?

What are the principal requirements of a valid tender?

5. A bought certain nurserystock, from B, a nurseryman for \$50, of which he paid \$10 down, and agreed to pay the balance in six months. B warranted the stock to be strong and thrifty and agreed to replace next season any which did not live. One-half the stock died shortly after planting. Before the \$40 was due B sold out his business to X, including A's contract. On hearing of that fact, A refused to pay or have any dealings with X.

What are X's rights against A, if any?

6. A and B met on the road, each riding a horse. B offered to trade, but his horse being manifestly inferior, A refused, whereupon B made some threatening remarks about A waking some morning to find his barns burned down. B was known as a bad character and A's barns at the time were full of crops and were not fully insured. A finally consented to trade, fearing that B might

carry out his threat, and they exchanged horses. Next day A went to town and insured his barns and contents to their full value and then went to B and demanded that he trade back. B refused and A brought replevin for the horse he had traded to B, first tendering the other.

Is he entitled to recover?

7. If the barn burned down, under the circumstances of the previous question, A having refused to trade would A be entitled to the insurance, assuming that he did not mention the threats of B to the insurance agent?

8. A, a manufacturer, contracted with B to make and set up in B's new store by a day certain a complete set of store fixtures of special design, which required one month to build. Just before they were ready for delivery, A's factory burned and the fixtures with it. B, on noticed from A that he could not fulfil his contract, ordered the fixtures from C at an increased cost of \$200. B was also delayed one month in opening his store, which he was renting for \$100 a month. Six months later he sued A for damages and offered to show that his average profits for the six months had been \$500 per month.

Is B entitled to recover from A, and if so, to what extent?

9. "Thirty days after date we promise to pay to John Doe and Richard Roe One Hundred Dollars, with interest at six per cent.

"PETER SMITH

"WILLIAM BROWN

"FRANK JONES."

Explain the common law rules as to the proper parties plaintiff and defendant in a suit on the above note.

How have those rules been changed by statute in Illinois?

10. A statute of Illinois provides that a mortgagee in a chattel mortgage, before he shall sell the chattels in case of non-payment, shall first give notice in writing to the mortgagor at least three days before the sale of the time and place of sale. As a penalty for failure to give such notice, the mortgagor is authorized to sue and recover from the mortgagee an amount equal to one-third of the value of the property sold.

A sold B's horse, on which he had a chattel mortgage, without giving B the statutory notice, the sale being otherwise regular. C, the purchaser, did not know of the failure to give notice, but on subsequently learning of it refused to pay a note which he had given A for the purchase price.

Can A sue and recover on the note?

Examination in Carriers.

PROFESSOR GREEN.

(June, 1910.)

(First write your answer; then give your reasons.)

1. A company was incorporated with exclusive right to move buildings within a certain city, and the duty was imposed on it of serving all applicants at reasonable rates. The company agreed for \$200 to move a certain building from one lot in the city to another a mile away. It took possession of the building and had moved it half way, when, without its fault, the building was destroyed by fire.

Is the company liable?

2. A peddler bought a railroad ticket and presented and checked for the journey an ordinary trunk. The trunk contained wearing apparel needed for the trip and also articles of merchandise which he intended to peddle about. The train was derailed and the trunk and its contents destroyed. The peddler also was injured. The cause of the disaster was in doubt.

What is the railroad's liability, if the damage occurred, (a) without negligence; (b) because of its failure to use ordinary care; (c) because of its gross negligence?

How, if at all, would it affect your answer if the peddler was travelling on a pass which entitled him to free transportation with baggage?

3. Where there is no statute on the subject, how far may a common carrier fix his own freight rates, and how far does the law limit his power to do so?

Answer both as to amount of charges and as to discrimination between shippers.

4. Is a common carrier liable for damage to goods which happens without its fault by the following accidents?

(a) A steamboat on Lake Michigan is driven aground by a gale of wind.

(b) A steamboat on Lake Michigan runs aground because, in a blinding snow storm, the captain can not tell his whereabouts.

(c) A railroad train runs into a telegraph pole blown by a hurricane across the track,

(d) A railroad train is delayed because of a collision due to the fault of another railroad so that ice in a refrigerator car gives out and butter melts because the weather is warm, it being July.

5. A box of books worth \$200 is delivered to a common carrier for transportation under an agreement, made in consideration of a reduced rate of freight, that the carrier shall not be liable

(a) for any loss however caused;

(b) for loss caused by negligence of the carrier's servants;

(c) for more than \$100 unless the shipper states the value of the article;

(d) unless claim is made within 30 days from the discovery of the loss;

(e) unless suit is begun within one year from the discovery of the loss.

What effect have these provisions if the books are lost in transit

(1) without negligence?

(2) by negligence of the carrier's servants?

How would it affect your answers if neither a reduced rate of freight nor any other special consideration were given for the agreement or mentioned in the bill of lading?

6. A, at Champaign, shipped goods by railroad and received a bill of lading by which the railroad undertook to deliver at Chicago to A's order. A showed the bill of lading to X, sold him the goods and at the same time indorsed and delivered to him the bill of lading. Then A, without producing the bill of lading, asked the railroad to let him have the goods again, saying

he had changed his mind about shipping them. The railroad delivered to A. X subsequently presented the bill of lading and demanded the goods, but the railroad could not deliver them.

What, if any, breach of duty towards X has the railroad committed?

What, if any, remedy has X?

7. A package was shipped by the American Express Company marked "A, Urbana." It reached the company's office at Urbana at 11:30 a. m., was entered in their books and in ordinary course would have left the express office at 1:30 and been delivered at A's office at 2 p. m. At noon, the express agent met A at a restaurant and told him of the package. A said: "Do not deliver it, as I am going out of town and my office will be closed. I will call for it at the express office tomorrow morning." At 1:00 p. m. the package was stolen without the carrier's fault.

Is the carrier liable?

8. A, in Danville, sold to B, in Champaign, a case of beer and a case of mineral water and shipped them by express marked "B, Champaign." By the terms of sale title to the beer was to pass to B on shipment, title to the mineral water on delivery by the carrier. Subsequently A received a letter from B enclosing money in payment for a previous shipment of beer but the money was counterfeit. A then told the carrier to deliver the mineral water to X, A's agent at Champaign, in-

stead of to B. He also instructed X to bring suit against B for the price of the previous shipment and to attach in that suit the beer in the hands of the carrier. B, however, intercepted the goods at Urbana, and demanded delivery of everything there. The express company knows all the facts and asks your advice as to its legal duty, and as to its liability to A if it does deliver, and to B if it refuses to deliver.

What advice would you give?

9. C sold corn to D, and shipped it by railroad. The bill of lading read: "Received of C, at Champaign, one carload of corn to be carried to Chicago and there delivered to D on his paying \$15 freight." D was well known and the railroad delivered him the corn without his paying freight. D afterward refused to pay freight.

Is C liable for freight?

Is D?

10. A delivered 100 barrels of lard to a common carrier by steamboat, to be carried to a point on a river 500 miles away, and there delivered on payment of a freight of 50 cents a barrel. When the steamboat reached a point within ten miles of her destination it was found that cold weather, which had set in unusually early, had so frozen the river that it would be closed to navigation until spring. A demanded that the goods be delivered to him without his paying freight. The carrier,

who was able and willing to wait and complete the voyage in the spring, refused to deliver except for full freight. A took the goods. The carrier sued for freight.

What, if anything, is he entitled to recover?

How would you answer if the carrier had not been able or willing to wait and complete the voyage in the spring?

How if the carrier had been able and willing to wait and complete the voyage if required, but at the shipper's request had delivered him the cargo, nothing having been said as to freight?

Examination In Court Practice.

DEAN HARKER.

1. While passing along the sidewalk on the west side of Wright S. Street in Champaign, in company with a large body of students, Walter Jones was crowded off of the west side of the foot-bridge which spans the "Bone Yard" between Green and Healy streets and thrown to the creek and ground seven feet below with such violence as to fracture his left arm between the elbow and shoulder. The hand rail on the bridge had been off for one week. He was confined to his room with the injuries received for a period of two weeks, paid out \$60 for medical attention and lost two months' time from his employment as a carpenter by reason of his injuries. The accident occurred on the 4th of October, 1909. The wages of Jones, as carpenter, average four dollars per day.

Select the defendant against whom suit should be brought, name the appropriate form of action and draft a declaration for the April term, 1910, of the Circuit Court of Champaign county, Illinois.

2. A was placed upon trial at the September term of the Circuit Court, 1909, upon an indict-

ment charging him with the murder of B. The jury returned a verdict finding him guilty of manslaughter. The defendant moved for a new trial upon the ground that one of the jurors before being examined had expressed the opinion that the defendant was guilty of murder and ought to be hung. Affidavits were read in support of the motion and at the January term, 1910, the motion was sustained. At the April term the case was called for trial; whereupon the defendant moved for a discharge upon the ground that the jury at the September term, by returning a verdict of manslaughter against him, had acquitted him of the crime charged in the indictment.

What are the rights of the defendant in the premises?

What action should be taken by the Court?

3. A, the wife of B, removed from Illinois, where she had lived all her life, to Texas in 1901. She owned real estate in Illinois which she rented and controlled to the time of her death, in March, 1909. She made large investments in Texas and announced that her permanent home was in that State. She made annual trips to Illinois to look after her holdings here, but said she would never again live in Illinois. B, her husband, heard his wife make her declarations about residence frequently. He made no protest, but always contended that he should regard Illinois as his home. He had but little property of his own and spent the most of his time in looking after the property of

his wife. On March 8, 1909, A died at her home in Texas, leaving a will and in it named B and C as executors. B and C presented the will for probate in a Probate Court in Texas, and in the application stated under oath that A's residence at the time of her death was in Texas, in the county where the will was presented. B and C qualified and took charge of the property. About ten months afterwards B returned to Illinois with all his belongings and moved into the house occupied by him and his wife before going to Texas. Contending that he had never changed his residence from Illinois, he now presents the will for probate to the County Court in the county of his residence in Illinois, and seeks general letter testamentary. C resists upon two grounds: 1. The Court in Texas was the proper one to probate the will and grant letters because the testatrix lived there when she died. 2. B is estopped from seeking probate in Illinois by his acts in the matter in the Texas Court.

Discuss fully the two grounds of objection and state what the Court should do in the premises.

4. James Long, a resident of Champaign, owned a horse which he had under treatment with a veterinary surgeon for two months. After the surgeon had reported that the disease of the horse was incurable, Long paid Walter Bain five dollars to take the horse out of the city, kill him and bury him. While Bain was leading the horse into the country he was met by a man who paid him ten dollars for him under the belief that he could cure

him. The man did cure him and afterwards sold him to C. H. Baddeley for \$150. Long subsequently saw the horse attached to a delivery wagon belonging to Baddeley. He made demand on Baddeley for the horse, and on Baddeley refusing to turn the animal over to him, begins suit in replevin in the Circuit Court of Champaign county. The horse is gray in color, fifteen hands high and eight years old.

Prepare demand, replevin bond and declaration.

Discuss fully the rights of the parties.

5. A, B, C, D and E contributed \$2,000 each to a joint stock company which they called the Champaign Canning Company and used the \$10,000 to erect and equip a vegetable canning factory. After the concern had been in business two years under the direction of A, B and C as directors it was discovered that X, a man selected to solicit orders for the company and make collections, had embezzled \$2,500 of the company's funds.

X was indicted by the grand jury in two counts, one for the embezzlement of \$2500, "the goods and monies of the Champaign Canning Company," and the other for the larceny of \$2,500, "the goods and monies of the Champaign Canning Company." X moves to quash the indictment.

Should the motion be sustained or overruled?

State reasons.

Examination in Common Law Pleading.

DEAN HARKER.

I.

A and B own adjoining tracts of wood land. There is a dispute between them as to the division line. A goes upon the land in dispute and under the belief that it is his land, cuts down twenty trees, shapes them into saw logs, hauls them to C's mill, and sells them to C, who now holds them. On a survey of the land procured by B, it is ascertained that the land in dispute really belongs to B.

Mention the different remedies open to B. State which one you would select and why.

II.

What are the different grounds upon which a motion for a new trial may be based?

III.

To A's declaration B pleads 'Now-Assumpsit,' and files one special plea in which he sets up

that he was an infant at the time the contract was made and that the action is barred by the statute of limitations.

As the attorney of A, what would you do?

State fully.

IV.

State the general issue to the declarations in each of the following actions:

In debt on specialty.

In debt on simple contract.

In trespass.

In trover.

In replevin.

V.

To A's declaration in debt to recover one year's rent on a five years' lease, B, the lessee, plead that before the rent was due he assigned the lease to C, of which A, the plaintiff, had notice. There is a dispute between the parties as to whether A had notice.

How should A meet the plea?

Why?

VI.

B committed two assaults upon A. In one of the assaults he was justified upon the ground of

self defense. In the other he was not. To A's declaration in trespass, *vi et armis*, B in confession and avoidance plead that the assault was committed in self defense.

How should A meet the plea?

VII.

Mention the two kinds of plea by way of confession and avoidance and define each.

VIII.

In a suit by A against B in trespass for taking A's goods, B pleads that he is sheriff of the county and as such authorized to take property on execution and sell the same; that "on the 6th of January, 1910, there came to his hands from the Clerk of the Circuit Court of Champaign county, Illinois, a writ of execution commanding him out of the goods and lands of the plaintiff to make the sum of four hundred dollars, by virtue of which he levied upon and took the plaintiff's goods."

Wherein is such plea defective?

IX.

How may the defendant take advantage of a misnomer of a party to the suit?

Of a person not a party?

X.

B pleads in an action of trover by A to recover the value of twenty yards of velvet, that the velvet was placed in his hands on a wager between A and C that the cloth was thirty-two inches wide, that it was agreed between A and C that if it was not thirty-two inches wide the entire piece should be delivered to C, that upon measuring the cloth it was found to be only thirty-one and a half inches wide, whereupon he delivered the twenty yards of velvet to C.

Wherein is the plea defective?

Examination in Domestic Relations.

PROFESSOR GREEN.

(June, 1910.)

(First write your answers; then write your reasons and state them concisely).

1. Bob, aged 15, with his father's permission, sold newspapers on the street. He bought papers on credit from Will, aged 21, for \$10, and sold them for \$15. He put the \$15 in a desk his father had given him as a Christmas present. Will sues Bob on his contract to pay for the papers. Bob pleads infancy without offering to return the money.

Judgment for whom?

2. A creditor of Bob's father sues Bob's father and gets judgment. He then attempts to have the desk and the money in it taken under execution to satisfy the judgment on the ground that they belong to the father.

Can he succeed (a) as to the desk; (b) as to the money?

3. Dick, aged 20, by fraudulently representing himself to be 21, induced Paul, aged 19, to sell him a watch on his promise to pay \$15 for it. Such a watch was a necessity for Dick. Paul prized it highly because he had bought it with the first money he had earned, and would not have consented to sell it for less than \$15, but similar watches could be bought at any store for \$10. Dick, who is now just 21, refuses to pay anything for the watch, on the ground that he was under age when he bought it.

What remedy may Paul have in an action of (a) contract, (b) deceit, (c) replevin?

4. Luke, aged 20, agreed to work for thirty days as a waiter in Leo's restaurant for his board. He worked fifteen days, and the value of his services exceeded his board by \$5. At the end of the fifteenth day he negligently broke \$2 worth of dishes. Leo rebuked him, and Luke in anger wrongfully quit work, to Leo's damage in the sum of \$10, by loss of custom before another waiter could be secured. Leo demands \$12 of Luke. Luke demands \$5 of Leo.

What are their rights?

5. Jimmy was 12 years old. While throwing stones at a tree he negligently hit and hurt Jenny, aged 6, who with her mother was incautiously standing near the tree.

Is Jimmy liable to Jenny?

Jenny's mother lost her temper and told Jenny to throw a stone at Jimmy. Jenny did so and put out Jimmy's eye, whereby it was certain that his earning capacity would be considerably impaired.

Is Jenny liable to Jimmy?

Is Jenny's mother liable to Jimmy?

Is Jenny's father liable to Jimmy?

Has Jimmy's father a right of action, and if so for what and against whom?

6. Mark, aged 18, having first obtained the consent of his parents, became engaged to marry Mary, who was 18. Next day, without his parents' consent, he married Martha, who was 15. By statute the age of majority is 21 for males and 18 for females, but "males of 18 and females of 16 shall, with the consent of their parents, be capable of contracting marriage."

May Mary sue Mark for breach of promise to marry?

7. Did Mark and Martha become husband and wife?

If so, may their marriage be avoided?

If so, when and by what means?

8. What are the requisites as to capacity of parties and as to ceremonies to constitute a marriage between persons of full age (a) where the so-called

common law marriage prevails, (b) under the statutes usual in States where common law marriage does not prevail?

9. George, who was 22, married Susan, who was 13. There was no statute relating to marriage by infants. He immediately deserted her. On a single occasion after the desertion had lasted over two years, Susan, being then 15, had sexual intercourse with another man. By statute a man who has intercourse with a girl under 16, is guilty of rape. Susan now sues George for divorce. He makes no defense, but the foregoing facts appear on the trial.

May Susan have a divorce?

10. Ann took her meals at a boarding house kept by John. She owed John \$100 for board. Then she married Sam. Sam deserted her, leaving her in want. She went back to John's boarding house and there ran up a further bill for board in Sam's name amounting to \$50. Then she got a divorce with a decree for alimony. As Sam did not pay the alimony and she was in want, John continued to supply her with board to the value of \$25, intending to hold Sam for it.

What, if any, rights has John against Sam, if this happened in Illinois in 1820?

In 1910?

Examination in Evidence.

(Give reasons for answers)

1. A sues the I. C. Ry. Co. for \$10,000 damages for personal injuries sustained by him owing to alleged negligence of the Company. In consequence of the injuries received A was confined to his bed for ten weeks, during which time B nursed him. At the trial B, who testifies in A's behalf, is asked, against objection, the following question:

"What did you notice about A during the ten weeks he was confined to his bed?"

The Court overrules the objection, and B replies as follows: "He complained of pain very much all the time. He was very nervous and seemed to suffer a great deal of pain much of the time." A motion is then made to strike out B's answer, but the Court allows it to stand. A recovers a verdict for \$3000.

Is either of the Court's rulings prejudicial error?

2. A seeks to probate B's will. C contests it on the ground that B was mentally incapable of making a will. To prove this C offers in evi-

dence, against objection, both ante-testamentary and post-testamentary declarations of B.

Should the objection be sustained?

3. A sues B on his promissory note. B pleads that the signature to the note is a forgery. Expert and non-expert opinion evidence is offered.

State the various circumstances under which each class of testimony is admissible.

4. A sues B for breach of contract. The contract is attested by two subscribing witnesses, both of whom are living and within the State, but neither of whom is present at the trial. Both the parties to the contract waive their right to insist on having, at least, one of the subscribing witnesses called to prove the execution of the instrument.

May A or B testify to the execution of the contract?

5. A files a bill against B to quiet title. The bill alleges that B holds a certain quit-claim deed of the land in question, and the Court is asked to declare this deed void. A gives B reasonable notice to produce his deed at the trial, but B refuses to do so. A then offers in evidence, against objection, a copy of the deed made from a letter-press copy.

Should the objection be sustained?

6. A sold his farm to B, and executed and delivered to him a deed. By mistake, the scrivener inserted in the deed the words "the northeast quarter of section 10," instead of "the northwest quarter of section 10." A now files a bill to have the mistake corrected.

Is parol evidence admissible to show the mistake?

7. A devised to his son B "the west half of the northeast quarter of section 20, township 16 north, range twelve east." A never owned the west half of the northeast quarter of section 20, or any part of it, but he owned, at the time he executed his will and at his death, the east half of the northeast quarter of section 20.

Is parol evidence admissible to prove A's intention to devise to B the east half of the quarter section described instead of the west half?

8. Samuel Jones devised a certain farm to "my beloved neice, Marv Jones, daughter of my brother, Henry." He never had a brother whose name was Henry. He had only two brothers, John and James—and each had a daughter whose name was Mary. Both of these daughters were living when Samuel Jones executed his will, and both claim the farm.

Is direct evidence of intention admissible to prove that the testator meant one of these daughters and not the other?

Is it admissible under the English rule?

9. A is on trial for robbery. B, who testified against A before the grand jury, now testifies in his behalf. With the view of impeaching B's credibility, C, the foreman of the grand jury, is called to the witness stand. A objects to C testifying to statements made to the grand jury on the ground that such statements are privileged communications.

(a) State the four general classes of privileged communications.

(b) Should A's objection be sustained?

10. A sues the I. C. Ry. Co. for damages for negligently causing the death of her husband by running an engine over him at a certain crossing. B, the engineer in charge of the engine at the time A was killed, testifies upon his cross-examination that he always rang the bell at that crossing. With the view of impeaching his credibility, contradictory evidence is offered, against objection.

(a) State the various ways of impeaching the credibility of a witness.

(c) Should the objection be sustained?

Examination in Equity Pleading.

TERENCE B. COSGROVE.

I.

Give the regular successive steps in a suit in equity.

What is the usual method of serving a subpoena, and what is such service called?

What do you mean by "substituted service?"

II.

When is a decree taken "pro confesso?" How may such decree be opened and upon what showing? If opened, what pleadings may the defendant then file?

III.

What are feigned issues? Is a verdict conclusive? Name and define the different kinds of injunctions.

IV.

When is an answer by one defendant evidence against his co-defendants?

How much of an answer under oath is evidence for the defendant?

V.

What is a writ of sequestration and when is it issued?

Give four distinctions between a motion and a petition.

VI.

May the defendants in a cross-bill exhibit a cross-bill?

What is a cross-bill and can it be exhibited as such when it could not be filed as an original bill?

May it be filed without leave of Court?

VII.

What is a bill of revivor and supplement?

When is a bill of Review an available remedy to review or modify a decree?

VIII.

When is a plea had for duplicity?

When for multifariousness?

Name and define the three classes of pleas.

IX.

When must a plea be supported by an answer?

X.

What are the two questions presented by a plea and how are they raised?

Examination in Equity.

MR. HALE.

I.

A is in possession of a farm claiming title by devise. B claims title to same property as heir, asserting that the will is invalid. The validity of the will is doubtful. A is proceeding to dig a drainage canal through a part of the farm. The soil is gravel and A is selling it as he removes it to the county to be placed on the public highway. A is also cutting and removing timber from the land, some of which is mature and some immature. Timber of that variety is scarce. A is under contract to deliver all of it to X. B is attempting from day to day to cut and remove grain from the farm, and also goes to the farm each day to dispute with A about his rights.

How shall A and B each proceed and to what, if any, relief is each entitled?

II.

State and discuss the "mutuality doctrine," giving illustrations of its proper and improper application.

III.

A father and son had been living together on the father's farm. The father, desiring to retire, moved to town. It was orally agreed between them at that time that at the end of ten years the father would convey the farm to the son for \$50 per acre. During this ten years the son was to pay as rental one-third of the annual crop. The son paid the rental as agreed, and expended several hundred dollars in putting in drainage ditches. Just before the ten year period was up the son also invested \$1,500 in new machinery and farm implements, which, if he retires from farming, will have to be sold at a great sacrifice. At the expiration of the ten years the son tenders the purchase price and requests a deed. The father refuses the deed and demands possession of the farm.

Give your opinion as to the rights of the son and the way for him to proceed.

IV.

A owns a small farm through which runs a mountain stream, the water of which he uses for his cattle and also for domestic purposes. B has begun to do hydraulic mining along the banks of the stream a mile above A's property. The soil that is washed into the stream makes the water very muddy and renders it unfit for all the uses to which A has been putting it. Conditions are such

where the mining is being done that any other method than the one used by B is impracticable, and his mine will be rendered worthless if he is not allowed to continue in the same way. The mining is likely to continue for a good many years.

A asks a perpetual injunction against the pollution of the stream by B.

Shall it be allowed?

V.

A contracted to sell and B to buy a certain tract of land containing 100 acres at \$100 per acre. A's title to 20 acres of the 100 acres was based on his adverse possession thereof for the statutory period. B, having since discovered this fact, refuses to carry out the contract. A files a bill for specific performance.

What relief, if any, should be given?

VI.

A owned a farm bordering on the survey of a proposed new electric line, construction work on which was under way. This enterprise caused land to advance considerably in value. B at this time was living in the vicinity of A's farm, but soon moved away to a distance of several hundred miles. Shortly after this the company abandoned its project. Prices of real estate immediately fell to about one-half what they were before. A thereupon wrote a letter to B offering the farm slightly

below the market price at the time B left. B having tried to purchase the farm at the same price before he left, wrote back accepting A's offer. B having since learned of the abandonment of the electric line, refuses to complete the purchase. A files a bill for specific performance.

What result?

VII.

The Y company was organized to purchase, improve and sell lands at a certain summer resort. It purchased 400 acres and laid it out in lots. It did not make many sales and was not a financial success. The plaintiff approached the company with an offer to purchase two large parcels and made a contract with the company to buy the same for \$38,700. Plaintiff thereupon purchased certificates of shares of the company's stock to the amount of 381 shares of the par value of \$100 per share. These certificates the plaintiff tendered to the company as good for \$38,100 of the purchase price when demanding the deed. The balance, \$600, he tendered in money. The plaintiff claimed the right to tender the stock instead of cash under a by-law of the company supplemented by a resolution to the effect that "hereafter the stock of this company shall be accepted at not less than par value in payment for land." The stock at this time of plaintiff's offer and now is worth about \$1 per share. The Y company proves that the by-law and resolution were forgotten at the time the

contract was made and that the company intended a cash sale. The land was well worth \$38,700. Plaintiff seeks specific performance.

Should the decree be granted?

VIII.

A held a valid claim against the Saxon Insurance Company. The Saxon Company sold its business to the Era Company. A released his claim against the Saxon Company and took in its stead a claim against the Era Company. It turned out that the transfer by the Saxon Company to the Era Company was *ultra vires* and therefore void and A's claim unenforceable. A asks that his transaction be rescinded and his obligation against the Saxon Company restored.

Shall the relief be granted?

IX.

X, a public telephone company constructed a telephone line partly along a highway adjoining the farm of A and partly across A's farm. A owns the fee in the highway, having granted to the public only a right-of-way.

What, if any, are A's rights in equity against the X company?

X.

Contract between A and B wherein A agrees to sell and B to buy a certain piece of land for the sum of \$5,000.00, payable in annual installments of \$1,000 each. Installments required to be paid on the first day of June. Time was declared to be of the essence of the agreement and it was expressly provided that in case of delay all payments made should be forfeited. B took possession and erected a house costing \$3,000. B paid four installments promptly, but was five days late with his tender of the last installment. A had been depending on this last installment to use in exercising an option which he held on another piece of property, which option expired June 3. By reason of B's delay A was unable to exercise the option. A railroad accident was responsible for B's delay. B asks specific performance.

What result?

Examination in First Year Real Property.

(June, 1910.)

ASSOCIATE PROFESSOR NORTHRUP.

1. A, full owner in possession, conveyed Blackacre to "B and his heirs for 99 years," and conveyed Whiteacre to "C for 10 years, remainder to D, remainder to E for life, remainder to F and his heirs."

Later C and E each conveyed their interests to D; F conveyed his interest to "G, H and I;" H conveyed to J; I and J both died leaving sons as their heirs, and finally A conveyed his interest in Blackacre to "K and the heirs of his body." K died without leaving any descendants. B died leaving two daughters.

At common law what kind of conveyance should be used on each transfer, what interests and estates were created by the several transfers and, after all the transfers and deaths, what interest has each person named?

2. L owned four lots numbered 1, 2, 3 and 4. L conveyed 1 to M for 99 years, remainder to N and his heirs if he married; 2 to P for life, remainder to the oldest son of Q and his heirs; 3 to

R for life, remainder to S and his heirs if he married not later than one year after R's death; and 4 to T and his heirs, but if T died unmarried, then to U and his heirs.

At the time of the conveyance N, Q, S and T were unmarried. Ten years later N had married O; M was living; P was dead; Q had married before P's death and a son had been born to him two years after P's death; R had been dead eight months; S had married six months after R died; T had died unmarried; U was living.

Who has what interests in each lot at common law?

3. (a) Name the common law interest of a surviving husband in the real property of his deceased wife; what is the extent of the interest and upon what circumstances is it dependent?

(b) Same questions as to the common law interest of a surviving wife in the real property of her deceased husband.

(c) What statutory changes in Illinois?

4. If A, owner of land, wishes to unite his brother B with him as joint tenant of the land, are there any conveyances operating (a) at common law; (b) under the statute of uses; (c) under both common law and the statute, by means of which he can do it without the intervention of a third party?

5. A made a bargain and sale to B for life, remainder to C and his heirs to hold to the use of X and his wife Y, during their lives and the life of the survivor, and, on the death of the survivor of X and Y, to D and his heirs to hold and manage the property and collect the rents and pay them to Z as long as she lived.

What legal and equitable estates were created?

6. During the civil war the military officers of the United States erected buildings upon posts set in the ground on a public common in a city for barracks and afterward turned them into a military hospital, making additions. After the war the government of the United States undertook to remove the buildings, and the city sought to enjoin it from so doing.

What result?

7. O—owner in fee. M—chattel mortgagee. V—vendee of land.

O bought of M an engine, shafts, belt wheels and belts. He set up the machinery in his factory. The belts were used in the ordinary way, running over the wheels, but not attached. O gave M a chattel mortgage on all the property purchased from him to secure purchase price. M filed the mortgage. Later O sold the factory to V, who did not know of the chattel mortgage. M was not paid the sum due him and demanded all the

mortgage property under his chattel mortgage. V refused to allow M to take it.

State what you think should be the rights of the parties and the doctrine of the Illinois Court.

8. A was tenant of a hotel building under a lease having fifteen years to run. The hotel had been kept for many years as a quiet, very respectable family hotel. A railroad had been put through the city not far from the hotel, and as a result the character of the neighborhood had so changed that the hotel could no longer be maintained successfully in its former character, although it could, without any change of the building, be profitably used as a saloon and cheap resort. A had an opportunity to sublease it for manufacturing purposes if it was altered to fit it for such uses. He was preparing to tear out certain partitions, to build others, to strengthen the upper floors with iron columns and to change the entrance to make it suitable for the intended use. The changes would leave the building of about the same value as it had been before.

(a) Could the lessor enjoin A from making the changes?

(b) If the changes were made without the knowledge of the lessor, could the latter maintain an action for waste against A, either during the life of the lease or after its expiration?

Examination in Insurance.

PROFESSOR GREEN.

(June. 1910.)

1. A house worth \$20,000 was insured against fire for \$10,000. Lightning struck it and knocked down a chimney, doing \$300 damage. Fallen bricks obstructing a flue caused a fire in a grate. to smoke and the smoke did \$100 damage. A brick falling down another flue into a grate scattered coals upon the floor, the floor caught fire and was thereby damaged to the extent of \$200. Smoke from this fire caused \$50 damage to furniture. The fire department was summoned and negligently threw on water though the fire was out before they came. The water did \$500 damage.

What is the liability of the insurance company?

2. A vessel worth \$20,000 is insured against perils of the sea in the sum of \$10,000. By collision due to negligence of her captain who is also her owner, she is damaged to the extent of \$5,000.

What is the liability of the underwriter?

3. If A, not contemplating suicide, insures his life by a policy payable to himself and silent as to

suicide, and subsequently kills himself intentionally to end excruciating pain, is the insurance company liable?

How would you answer if when A killed himself he were so insane that he did not know the moral nature of his act nor appreciate what it really meant to himself or to his family?

How would you answer each of the above questions if the policy said: "This insurance does not cover death by the insured's own hand"?

4. A owns land worth \$5,000 on which is a house worth \$4000. He mortgages house and land to B to secure a loan of \$3,000. A then takes out a policy of fire insurance on the house for his own benefit in the sum of \$4000. B takes out a policy for \$4000 for his own benefit in another company. The house is damaged by fire to the extent of \$2000.

What are the rights and liabilities of the insurance companies?

5. A, negotiating for the purchase of a ship at sea, and being unwilling to close the contract until he had procured his insurance, insured the vessel for her then voyage, lost or not lost. He then closed the contract for her purchase and received a bill of sale of the ship. Afterward he sold her to X, but still later bought her back again.

Are the underwriters liable, and if so, to whom, if the ship is lost by perils named while on the voyage insured, (a) before the insurance was made, (b) after A bought her and before he sold her to X, (c) while she belonged to X, (d) after A had bought her back again?

6. D owed \$1000 to C. C insured D's life for \$1500. Two years later D paid the debt. C subsequently assigned the policy to X for \$800. X thereafter paid the premiums. D died three years after the assignment.

To whom and for how much is the insurance company liable?

7. A went to Africa on a lion hunt. His sister, hearing a rumor that he had been killed by a lion, took out a policy of insurance on his life to run for a year from the time he had landed in Africa. She did not inform the company of the rumor, but the agent who decided whether to issue the policy had heard of it from another source, and had it in mind. At the same time, A's wife took out a similar policy on A's life in another company, which had not heard of the rumor. The wife told them nothing of the rumor because she had not heard of it, the sister having concealed it from her to save worry, though she knew that the wife was going to insure. A perished in a shipwreck on his way home within the year.

Are the policies enforceable?

8. An applicant for fire insurance is asked the value and cost of his property, whether it is mortgaged and for how much. He answers that it is worth \$10,000, cost \$7,000, and was unencumbered by mortgage. In fact it was worth only \$8,000, had cost \$8,000, as he knew, and, without

his knowledge was mortgaged for \$1,000. His statement of value was made in good faith.

Which, if any, of his statements invalidate the policy?

9. A policy of life insurance was by its terms payable 30 days after proof of death by sworn certificate of the clergyman who officiated at the funeral. The clergyman who officiated signed a certificate, but would not swear to it, because he had scruples against taking an oath.

May payment be enforced?

How would you answer if the person whose life was insured disappeared and was never heard of again, and there was no funeral, and no clergyman's certificate?

10. A owns cotton which is insured against fire and is in a warehouse. He takes a part of it out, puts it on a ship and insures it for the voyage. Then he sells all the cotton to X and assigns and delivers the policies to him. The cotton in the warehouse was lost by fire; the cotton on the ship the cotton on the ship by perils of the sea.

Are the fire and marine insurers, who know nothing of the sale or assignment, liable, and to whom?

Examination in Mortgages.

TERENCE B. COSGROVE.

I.

Give brief statement of the origin of the "equity of redemption" and right to "foreclose" now recognized in dealing with mortgages.

II.

Do the Illinois Courts follow the legal or the lien theory?

What do you understand by occupation rent and what is the law in Illinois on this subject?

When, in Illinois, may the mortgagee maintain ejectment against the mortgagor?

III.

A, being indebted to B, and desirous of securing the payment of the debt, entered into an agreement with B by which A was to sell certain described realty and from the proceeds satisfy the claim of B. This agreement was in writing. A, having failed to fulfill the contract, B files a bil

seeking to perfect the written instrument, claiming that it is an equitable mortgage.

What do you say as to the merit of this contention?

IV.

A mortgages to B a crop of corn not yet planted. Later and after the planting, A makes a payment on the mortgage debt and takes a receipt for such amount. Before B takes possession of the crop a judgment creditor of A attaches the corn.

The question arises as to the priority of the lien of the judgment creditor over the mortgage of B.

How should it be decided, the judgment creditor having no notice?

Give the rule in Illinois only.

V.

A being indebted to B, wrote him a letter promising to execute a mortgage to the amount of the loan on certain described realty for the purpose of securing the loan. Later, meeting B on the street, A, on the promise of increasing the amount of the contemplated mortgage, induces B to make a further loan to him. A dies before executing the mortgage. B now seeks to have the latter declared an equitable mortgage and introduces the letter for this purpose. In order to fix the amount A then proposes to testify as to the

oral agreement made at the time of the last loan on the street.

Would such evidence be competent?

VI.

What is meant by a "clog" on the equity of redemption?

Give an illustration.

Upon what theory and for what purpose is oral evidence admissible to show that a deed absolute upon its face was intended as a mortgage?

VII.

A executes to B a mortgage conditioned as follows: "The condition of this deed is, that whereas, said A has this day executed his note of hand to said B, dated May 10, 1898, on demand, if said A shall truly and faithfully pay to said B the amount of said note, agreeably to the tenor thereof, then this deed to be void, otherwise to remain in full force and effect. The instrument is recorded.

Afterward C advances money to A, takes a mortgage on the same premises mortgaged to B, and upon foreclosure claims that it takes priority over the mortgage to B.

B consults you, what would you advise as to the contention of C?

VIII.

In Illinois, A executes a mortgage to B on farm land therein situate. Afterward A, while in possession, gives a lease for a term of ten years on the land to C. The mortgage debt falls due one year later, and B, the mortgagee, enters upon the land for condition broken. C, the tenant, informs B that he holds under a lease from A and at the same time tenders to B an installment of rent, which B accepts.

C consults you. What are his rights? State fully,

IX.

Action by plaintiff to recover dower in certain premises. Plaintiff and her husband having executed a mortgage to one Hurley on certain lands, later the husband of the plaintiff sells his equity in such lands to one Maher who agrees to pay the mortgage and becomes personally liable therefor. Before so doing Maher dies and his executor pays the mortgage debt when it falls due. The plaintiff now demands dower in the land. The executor contends that before she is entitled to her dower share she must contribute her ratable portion of the amount expended in redeeming the land.

What do you say as to the merits of the contention?

X.

To secure a loan of money, A gives to B an absolute deed to his land, B executing a contract

to recovery on payment of the mortgage indebtedness. A, unable to pay on the last day, surrenders such contract to B in discharge of the mortgage indebtedness. A judgment creditor of A now seeks to levy upon the premises, claiming that A still has an equity of redemption in the land.

What do you say as to this contention?

Examination in Municipal Corporations.

TERENCE B. COSGROVE.

I.

Define Municipal Corporations.

Give principal distinctions between public and private corporations.

II.

A portion of the territory formerly embraced within the corporate limits of Lowell is excluded therefrom by virtue of a vote of the people of that city. The legislative act authorizing the vote prescribed that such segregated territory shall be liable for its pro rata share of the indebtedness of the original corporation.

Afterward, when such segregated territory had paid a portion of its share of the indebtedness, the Legislature passed an act relieving such segregated territory of its share of the indebtedness and transferring such indebtedness to the original corporation.

Is the last mentioned act valid?

III.

The Legislature passes an act creating a board of Park Commissioners for the city of Urbana and directing and empowering them to extend and improve the city parks and to issue the bonds of the city in payment thereof, The city council refuses to pass any ordinances on the subject. Municipal bonds are issued by the Park Commissioners and are now being sued upon by holders in due course.

What defense, if any, has the city?

IV.

In an unsettled portion of the city of Alton a certain street that had been dedicated to public use is fenced in by an abutting property owner who holds adversely for a period of twenty-two years.

The question now arises as to the relative rights of the city and the adverse holder as to the property in the street.

How should it be decided?

V.

The general statutes provide that bridges over streams dividing cities shall be built at their joint cost. A special act requiring the city of A to build and maintain a bridge across the X river, half of which would be in the city of B.

Discuss the validity of such act.

VI.

What becomes of the debts of a municipal corporation when such corporation is divided into other corporattons and its existence extinguished, or portions of its territory segregated and organized into new political subdivisions or annexed to other municipal corporations?

VII.

What, in Illinois, is the liabilify of a municipal corporation to abutting property owners for a change in the grade of its streets, causing such cwners damage or inconvenience?

VIII.

The county authorities allow the Champaign county court house, which is being used for governmental purposes, to become insecure and out of repair. The plaintiff, in leaving the building after having taken the teacher's examination for a county certificate, is injured, through no negligence of his, by the falling of the passenger elevator.

In this action against the county what are the relative rights and liabilities?

IX.

Discuss fully the effects of recitals in municipal bonds when in the possession of holders in due course.

X.

By its charter the city of Quincy is empowered "to provide the city with water and to erect hydrants and pumps in the street for the convenience of its inhabitants." The city erects a water tank in the center of the street, occupying one-half the width thereof, to which is attached a steam engine for the purpose of supplying the city and its inhabitants with water.

Would this be an authorized use of the street, and if not, what are the two remedies open to a complainant, and when does each lie?

Examination in Private Corporations.

TERENCE B. COSGROVE.

I.

The power to alter or amend being reserved by the constitution, the Legislature amends the charter of a corporation so as to change the liability of stockholders, for debts of the corporation. The directors refuse to accept the amendment but continue to do business. Creditors of the corporation sue stockholders attempting to enforce the liability provided by the amendment.

What should be the result?

What effect has such amendment?

II.

There having been no reservation of power, the Legislature passes an act making the shareholders of a bank liable for the debts of the corporation.

Is such an act valid?

Discuss this proposition fully, giving the theory upon which it should be decided.

III.

What is the liability of a corporation for crimes?

How may a corporation be dissolved?

What is the common law liability of a shareholder for debts of the corporation?

IV.

A banking corporation enters into a contract with a broker by which the broker agrees to deliver to the bank 1,000 bushels of wheat at a fixed price. The contract is clearly ultra vires the corporation. The wheat is delivered but the purchase money is not paid. Later, wheat rising in value, the broker begins a suit in equity to compel a return of the wheat.

How should the case be decided?

V.

The same facts as in No. IV, except that the bank pays for the wheat with two promissory notes. The broker holds one himself, the other is negotiated to a holder in due course. Falling due, the bank refuses to pay either of them. Actions on the notes by the broker and by the holder in due course.

Should there be a recovery in either case?

Discuss fully.

VI.

The A. B. railroad company leases all its properties to the X. Y. company for a period of 99 years, surrenders possession and accepts the consideration. Two years later the A. B. company repudiates the contract and secretly obtains possession of all the properties leased. They then file a bill praying for an injunction to prevent the X. Y. company from retaking the properties. The X. Y. company begins a suit asking that the contract be cancelled and that the A. B. company be compelled to return the unearned portion of the consideration.

What would a Court of equity do in such a case?

VII.

The Illinois Traction Company enters into a contract of partnership with the complainants to dispose of certain stocks and bonds. After a period of several months this bill is filed praying for an accounting of profits and asking that a receiver be appointed for the partnership to wind up the business.

Defendant corporation demurs on the ground that the corporation had no power to enter into a partnership agreement.

What should be the ruling and why?

VIII.

The laws of Illinois provide that it is unlawful for any foreign insurance company to transact any business of insurance in this State without first procuring a certificate of authority from the Auditor of State. A policy is issued in violation of this provision by a foreign corporation, and the insured having died, a suit is begun by the beneficiary under the policy.

This statute provides a penalty for its violation.
Give the Illinois law applicable.

IX.

This is a bill filed by the creditor of an insolvent corporation, to subject property taken by a former stockholder, the present defendant, in exchange for his stock. It appears that the stock was surrendered and cancelled and this property given in exchange. This property had been a portion of the property purchased with the money originally paid for stock subscriptions.

How should you advise the defendant as to his liability, the statute in Illinois providing that a shareholder shall be liable for the debts of the corporation only to the extent of the unpaid portion of his stock subscription?

X.

James Armstrong, by will, devises to the Y. M. C. A. of Illinois University 320 acres of land situated in Champaign county.

Let us suppose that corporations of this character are 'prohibited from holding land in excess of 10 acres.

A bill is now filed by the heirs of Armstrong against the trustees of the Y. M. C. A., asking that the property be partitioned among the heirs. The property is in the possession of a tenant under a lease from Armstrong.

By answer the question arises as to the ownership of the land, the Y. M. C. A. claiming under the will. The complainants pleading the incapacity of the Y. M. C. A. to take more than 10 acres.

How do the Illinois Courts view the situation?

Examination in Partnership.

ASSOCIATE PROFESSOR NORTHRUP.

(June, 1910.)

I.

A and B entered into an agreement by which A was to furnish a store house and stock of goods, and B was to manage the business and sell the goods, for which B was to receive (as expressed in the agreement) "one-third of the profits realized by the firm."

Are they partners as between themselves or are they liable as such to third persons?

II.

A and B were partners. The firm being solvent, A sold his interest in the business to B, who paid A cash and covenanted to pay the firm debts and to indemnify A against liability therefor. Before these debts were all paid B became insolvent. There are three classes of creditors:

- (1) Creditors of the firm of A and B.
- (2) Creditors of B subsequent to the dissolution but relating to the business.

(3) Creditors of B having no relation to the business.

What are the respective rights of these creditors in the property of B, whether connected with the business or separate?

III.

The firm of A and B was owner of real property bought and used for firm purposes. A's share in the firm was a two-thirds interest and B's share a one-third interest. The real property was held in the names of the two equally. There were no firm debts.

A died intestate. His heir claimed title to the undivided share of A in the real property. The administrator of A's estate brought a bill to have A's interest in the realty sold and the proceeds distributed as personalty.

What result?

IV.

A, B and C were partners. The firm and each one being insolvent, C wished to close up the business, but A and B were unwilling to do so, and C assigned his interest to them in consideration that they would pay the firm debts. A and B continued business for a time and incurred new indebtedness. They then made an assignment for the benefit of all their creditors. The creditors

of A, B and C claim a right to the assets which belonged to the partnership at the time of C's retirement in preference to the subsequent creditors of A and B alone.

Are they entitled to such preference?

V.

C obtained a judgment against A and B, partners, which judgment because a lien on a piece of land owned by A alone. The firm and both of its members became insolvent and the property, firm and individual, is in the control of a Court of equity for distribution.

How should the rule of distribution of partnership and separate assets apply to C?

VI.

M employed B to conduct a business for M, the capital of which was furnished by M. B was to receive a regular salary. The profits were all to go to M. The business was conducted under the name of M & Co. B alone managed the business. Persons dealing with the business house supposed B was a partner. Some time later both became bankrupts.

How should M's assets used in the business and his assets not so used be distributed among the creditors of the business and M's individual creditors?

VII.

The firm of A, B and C was indebted to X on a judgment recovered by him against the firm. The firm was solvent.

A conveyed all his interest to M; B conveyed all his interest to N and C conveyed all his interest to O. Later M and N each conveyed the interests so acquired to O. Later a levy was made on the firm property by the sheriff under X's judgment. O brought trover against the sheriff.

Who should succeed?

VIII.

Answer briefly:—

(a) State general rule of distribution of bankrupt partners' estates between their firm and individual creditors.

(b) What can be reached by an execution creditor of one partner, by levying on firm property?

(c) Is the assignment by a partner of separate property for a partnership debt valid as against his individual creditors when the partner is insolvent?

(d) State the rule as to the distribution of the estate of a deceased partner between his individual and the firm creditors.

Examination in Suretyship.

MR. DECKER.

(Give reasons.)

1. A, a guardian, without authority of Court, loaned money of his ward to X, and took a mortgage on X's home as a security. X made a second mortgage to Y. X was insolvent and the mortgaged property so deteriorated that it was not sufficient to pay both mortgages. On a settlement of the guardianship estate, A was ordered to account for the money loaned and B, the surety on his bond, finally was forced to pay it.

Is B entitled to subrogation to the mortgage?

2. A, a corporation, borrowed \$10,000 by note payable January 1, 1908, from X, a bank, and deposited certain bonds as collateral. Subsequently M and N, directors of A, executed the following agreement with the bank:

"In consideration of the surrender by X of certain bonds of A, which it holds as collateral to a certain note (describing it), we jointly and severally guarantee the payment of said note at maturity, or at any time to which it may be extended."
Signed M and N.

The collateral was released by X on the faith of this agreement. Later M died, but before the maturity of the note. At maturity it was extended by the bank for sixty days on payment of interest in advance. It was not paid at the end of the extension and the bank now seeks to prove the debt against M's estate.

Can it do so?

3. If the above agreement had been oral, would the statute of frauds be a defense?

4. A and B were joint and several makers of a note to X. B was only a surety, but that fact did not appear on the face of the note, though X had knowledge of it. A died and X failed to prove the note against his estate for over two years, when it was barred.

If X afterwards sues B, has he any defense?

Would it make any difference in your answer if the transactions took place in Illinois?

5. A, desiring to borrow \$1,000, induced B to sign his name on the back of the following note:

January 1, 1909.

"Six months after date I promise to pay to _____ One Thousand Dollars with interest at the rate of — per cent per annum until paid."

Signed A.

It was understood that A was to borrow the money from the person who would accept the lowest interest, but was not to pay over six per cent, and A was to fill the blanks accordingly. Unable to get the money at six per cent, A finally negotiated the note on February 1, 1909 at seven per cent to X, filled the blanks accordingly and changed the date to February 1, all without knowledge of A. X sold the note on March 15 to Y, a holder in due course.

Can Y recover from B?

6. In consideration that A bank would take B as cashier, C signed a fidelity bond for him. Six months later C died. The bank, on hearing of that, told B to get a new bond, or his services would be dispensed with at the end of the month. B disappeared the next day, taking with him funds of the bank to a large amount.

Is the estate of C liable?

7. A sent to C by mail the following paper: "For value received I promise to guarantee the account of B for goods hereafter sold by you to him to the amount of \$1,000."

- (a) Is this a continuing or a special guaranty?
 - (b) Is it revocable?
 - (c) What would be the effect of the death of A?
 - (d) Is notice of acceptance by C necessary?
- Explain different theories.

8. A bought a horse from B and gave in payment a note of C, on which he endorsed: "I hereby guarantee the payment of the within note at maturity," and signed the same. The note was not paid at maturity and B sues A on the guaranty. A pleads the statute of frauds.

Is he liable, assuming that the law requires the consideration to be stated in the memorandum?

9. A is obligee, M is principal and X is surety on a joint bond. X paid the debt at maturity, M being insolvent. Seven years later M inherited property but refused to pay X, claiming that the debt was outlawed.

Has X any remedy, assuming the statute of limitations to be as in Illinois?

10. A was surety for B on a joint and several note to X. X demanded payment from A at maturity. He went to B, who informed him that he had a good set-off against X and told A not to pay. X sues A, and on the advice of his attorney, A paid X.

Is B liable to A for indemnity?

Examination in Torts.

MR. HALE.

I.

Plaintiff was induced to purchase a horse from the defendant by the following statements of defendant:

(1) "The horse has no bad habits. He is perfectly safe for family use."

(2) "I paid \$200.00 for the horse one month ago." After the sale was consummated plaintiff learned that the horse was in the habit of running away. Defendant, however, did not know of this trait, owing to the fact that he had never driven the horse, nor been told by his employees about the animal's habits. Defendant honestly believed that the horse was safe. Defendant had only paid \$100.00 for the horse. Plaintiff paid \$250.00 for the horse. It was actually worth only \$50.00.

Can plaintiff recover in an action of deceit?

First state the requisities for the maintenance of an action of deceit; then apply to above statement of facts.

II.

A was a locomotive engineer. B was a fireman on the same train. B informed the master mechanic that A was intoxicated on his last run. B's statement was false.

If no further facts appeared, for whom should judgment be given in an action of slander by A against B?

Why?

Suggest additional facts that would change your result and state upon whom the burden of presenting and proving such facts would be.

III.

- (a) Define libel. Define slander.
- (b) In what important respects do they differ?
- (c) What part does malice play in the law of defamation? Illustrate.

IV.

A was a salesman in B's employ at a salary of \$75.00 per month, and under contract to work a year at that rate. Before A's year was up C made A an offer of \$100.00 per month, as a result of which A, at the end of the month, left B and went to work for C.

Will a declaration setting out the above facts state a cause of action against C?

V.

(a) Plaintiff alleges that defendant maliciously instituted criminal proceedings against plaintiff, whereby plaintiff was damaged in the sum of \$5,000.00

Defendant demurs on the ground that the complaint does not state facts sufficient to constitute a cause of action.

What ruling?

Why?

(b) What is the meaning of "malicious" in "malicious prosecution?"

Give illustration of maliciousness on defendant's part.

VI.

A constructed on his premises in a sparsely settled suburb of a city several large oil tanks in which he kept petroleum for the supply of the local market. A used every precaution to guard against fire. Notwithstanding precautions, however, a spark from a passing traction engine ignited one of the tanks, causing an explosion. As a result, B's house, located one hundred yards away, was destroyed.

Has B any rights against A?

State doctrine applicable to the case fully.

VII.

A's horse escaped from A's pasture into B's field, where he destroyed corn to the value of \$2.00 and bit B's child, causing serious damage.

Assume that the case arose in Illinois.

What are B's rights against A?

Make any assumption of additional facts that you may consider necessary to a satisfactory opinion.

VIII.—IX.

A and B are non union typesetters in the employ of K, a newspaper publisher, working by the day. The X union is composed of typesetters, who are also in the employ of K by the day. M is a merchant who has been in the habit of having his advertising done in K's paper. Y is a union, composed of clerks, who are in the employ of M by the day.

(a) The members of the X union notify K that unless he discharges A and B the union men will strike and induce all union men not to buy K's paper. While K is holding out, the members of the union send out letters to all union men asking them not to buy K's paper. Sales fall off and K, in order to avoid further financial loss, discharges A and B.

Have A and B any remedy against the members of the X union?

(b) Assume that K did not yield to the influences above set out and that the members of the Y union, in order to assist the members of the X union, informed M that they would strike unless he discontinued advertising in K's paper or induced K to discharge A and B; that thereupon M notified X that he would have to withdraw his patronage

if something were not done to pacify the union and that thereupon K yielded and discharged A and B.

Discuss the rights of A and B against the members of the Y union.

X.

X was pasturing his horse with B. The horse looked very much like one of B's horses. B sold the horse to C, thinking it was his own, sending C a bill of sale to the same. C received the bill of sale and sent his check in payment for the horse. B shipped the horse by the Y. R. R. Co. The R. R. Co. carried the horse a distance of 1,000 miles, where it was killed by reason of the company's negligence.

Can X maintain an action of trover for conversion against either B, C or Y?

Examination in Wills.

ASSOCIATE PROFESSOR NORTHRUP.

(June, 1910.)

1 and 2. Testator in his last illness requested A to prepare his will for him and directed that twenty shares of railroad stock owned by testator be given to X and testator's house be given to Y. A wrote the will in testator's presence immediately, but inadvertently made the will give both the stock and the house to X by two separate paragraphs, the one giving the stock and the other the house.

When A had completed writing the will he read it over to the testator, who listened, and when the reading was finished said: "Now it must be signed but I am too weak. A, you sign it for me and sign as one of the witnesses and get another."

A carried the will to a desk at the side of the room opposite the bed and, sitting at the desk with his back to the testator, signed testator's name and below it wrote the word "witnesses" and then his own name.

A then called the nurse from an adjoining room and said: "This is Mr.....'s will. Please

witness it." The nurse signed her name below A's and left the room.

During the signing by A and the nurse the testator lay on his side with his face toward the desk but with his eyes shut. After the nurse had left the room A went to the bedside and asked the testator: "How are you." Testator replied: "Pretty bad. I am glad the will business is done."

(a) Should the will be admitted to probate? Discuss the sufficiency of the different steps taken in its execution.

(b) Assuming that the will is admitted to probate, can the mistake in the disposition of the property be corrected?

Discuss the various points involved.

3 and 4. Testator wrote what he termed his last will, in which he made several devises and bequests, among them a devise of a certain lot number 10 to A. There was no residuary clause. Later he sold some real estate and purchased other. He then wrote on a separate sheet of paper a codicil, beginning: "This is a codicil to my last will;" and reciting that "as I have sold the land devised to A, I now give A in lieu thereof" the newly purchased land. In this testator was mistaken. He had not sold lot 10 but another lot. The newly purchased lot was known as lot 12. Neither the will nor this codicil was attested.

Later testator acquired additional property, real and personal, and duly executed, on a separate

sheet of paper, another codicil as follows: "I make this as a codicil to my last will and testament, hereby confirming all gifts as previously made, except as herein otherwise directed. I appoint B as my executor and wish and empower him to dispose of my property as heretofore directed and as directed by me in my letter to him which will be found in a sealed envelope with my will."

There were found after testator's death, together in his desk, the will, the two codicils and a letter bearing a date of three days earlier than the second codicil, in a sealed envelope, endorsed: "Letter mentioned in my last codicil." The letter directed the executor "to transfer to C lot 12 which I have heretofore given to A, as I have become displeased with A's conduct."

Who should receive the two lots, numbers 10 and 12?

5. Testator made a bequest of \$5,000 to each of his sons A, B and C and then stated in the will that the bequests to his sons should be reduced by the amounts stated in his books of account to be charged against them as advancements.

Testator had previously intended to give to A \$1500 and had entered it in his book with the statement that "This amount is to be deducted from any legacy I may make to A." Two years after making the will testator gave B \$2000 and directed in his books that the sum should be charged to B as an advancement. Three years

later and shortly before his death, testator charged in his books \$2000 as an advancement given to C and directed it to be deducted from C's legacy. In fact neither A nor C had ever received from testator the sums charged against them as advancements.

How much should each son receive from the estate of his father under the will?

6. Testator became angered against certain of the legatees named in his will and threw the will on an open fire, intending to revoke it, and left the room. Half an hour later he changed his mind, returned to the room and, finding that the will had fallen off the fire, picked it up and preserved it, intending it to stand as his will. The will was slightly burned on the upper edge and the first two or three lines were slightly singed, but the writing was clearly legible.

Should the will be admitted to probate?

7. A will witnessed by one person only gave a specific legacy to A. By a codicil testator revoked the gift to A and gave the property to B. Later, in a second codicil, he said: "I hereby revoke the first codicil to my will."

Is A entitled to the legacy (a) in Illinois?

(b) Under the Statute of Frauds?

8. A made his will leaving a Rembrandt paint-

ing to his son B, \$4000 to his son C and \$3500 to D, who was not related to him. Later, during his lifetime, he gave a piece of statuary owned by him and about equivalent in value to the painting to B, a parcel of land worth \$4200 to C and \$1500 in money to D.

(a) If nothing appears as to testator's intentions, should the legatees receive their legacies?

(b) Is it admissible to show, in actions brought to recover the legacies, that the testator intended the gifts to take the place of the legacies?

9. A in his lifetime gave to his wife, without consideration, a mortgage on certain personal property which A held as mortgagee. After A's death certain creditors of A brought action against the wife, seeking to charge her with the amount of the mortgage, and showed that A was insolvent at the time that he made the gift (which would make the gift void as against his creditors,) and that after his death the wife had negligently failed to enforce payment of the mortgage and that the security had now become insufficient and the mortgage debt could not be collected.

The wife showed that when she received the gift she did not know that her husband was insolvent and that as soon as she learned that fact after his death she had transferred the mortgage to her husband's executor.

Is she liable in the action brought by the creditors?

10. A had begun proceedings to foreclose a mortgage of \$5000 on B's house. While the proceedings were pending, one X died leaving a will appointing B executor and giving him bonds worth \$10,000.

B, three weeks after proving the will and being appointed executor, took the bonds to A and transferred them to A in consideration of \$5000 in cash and the discharge of the mortgage. B showed to A the will of X and endorsed the certificates as executor. A made no further inquiries. The estate of X was insolvent and a bill in equity was brought to have the transfer of the bonds set aside in order to have them applied to the payment of debts.

Should the transfer be set aside?



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